TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 564

MILTON E. SPRINGER, DALMACIO COSTAS, AND ANSELMO HILARIO, PETITIONERS,

vs.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

PETITION FOR CERTIORARI FILED SEPTEMBER 28, 1927

CERTIORARI GRANTED NOVEMBER 21, 1927

(33,016)

(33,016)

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THE UNITED STATES OF AMERICA

PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

G. R. No. 26979—Quo Warranto

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
Plaintiff,

VERSUS

MILTON E. SPRINGER, DALMACIO COSTAS
and ANSELMO HILARIO,
Defendants.

(ORIGINAL JURISDICTION)

BE IT REMEMBERED that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case:

On the 7th day of December, 1926, the plaintiff, through its attorneys, filed in the office of the

clerk of the Supreme Court, the following complaint:

(CAPTION AND TITLE OMITTED)

Now comes the Government of the Philippine Islands, the plaintiff in the above-entitled cause and for its cause of action against the defendants herein avers:

I

The National Coal Company is a corporation organized and existing under and by virtue of the provisions of Act 2705 of the Philippine Legislature, as amended by Act 2822 thereof, and of the Corporation Law of the Philippine Islands.

II

Section 4 of said Act 2705, as amended by Act 2822, reads as follows:

> "The Governor-General, on behalf of the Government of the Philippine Islands shall subscribe for at least fifty-one per centum of said capital stock, and the remainder may be offered to the public. Ten per centum of the value of all stock subscribed shall be

paid at the time of the subscription, and the balance thereof shall be paid at such time as shall be prescribed by the Board of Directors. The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

III

On November 10, 1926, the Governor-General of the Philippine Islands, by Executive Order Number 37, due notice of the contents of which was given to the President of the Senate and the Speaker of the House of Representatives of the Philippine Legislature, declared that on account of the invalidity of that part of the Act creating the voting committee or Board of Control, the Governor-General would thereafter exercise exclusively the duties and powers theretofore assumed by the Board of Control or voting committee hereinabove mentioned.

IV

The board of directors of the National Coal Company consists of five shareholders to be elected by the stockholders.

V

Pursuant to the provisions of the by-laws of the National Coal Company, the regular annual meeting of the shareholders thereof for the year 1926 should have been held in the City of Manila in the month of August, 1926, for the election of directors and the consideration of such other matters as might properly come before a regular annual meeting of shareholders, but no such meeting was held by reason of the non-attendance of a sufficient number of shareholders to constitute a quorum for the transaction of business.

VI

Thereafter, to-wit, on the 6th day of December, 1926, a special meeting of the shareholders of the said corporation was duly and legally called and held at its place of business in the City of Manila for the purpose of electing directors and transacting such other business as might properly come before the meeting, of which special meeting due and timely notice was given in the manner prescribed by the by-laws of said corporation, a copy of which by-laws is hereunto attached, marked Exhibit "A".

VII

At the time the said special meeting of shareholders took place, the total number of shares of the stock of the said corporation outstanding was 30.000, of which 29,809 shares were owned by the Government of the Philippine Islands, plaintiff herein, and registered in its name on the stock books of said corporation.

VIII

At the said special meeting of the stockholders of the National Coal Company the Governor-General of the Philippine Islands, exercising the voting power of the 29,809 shares of stock owned by and registered in the name of the Government of the Philippine Islands, by ballot in writing, cast votes for the election of five shareholders, duly qualified to be directors of said company, namely, Alberto Barretto, Romarico Agcaoili, Frank B. Ingersoli, H. L. Heath and Salvador Lagdameo as directors of the said corporation, to hold office as such until their successors should be duly elected and qualified, but did not vote for either of the defendants above named.

IX

Each of the persons named in the preceding paragraph, for whom the votes of the Governor-General were cast, was the registered owner in his own right of one share of the stock of the National Coal Company, except Salvador Lagdameo.

X

The said Salvador Lagdameo is the Acting Treasurer of the Philippine Islands, and at the time of the said election, but less than ten days prior thereto, had presented to the proper officers of the corporation for transfer stock certificates for five shares of the stock of the National Coal Company, duly endorsed by the registered private owners thereof as sold to the Insular Treasurer; and after the said meeting the said five shares were actually transferred to the Insular Treasurer, as such, and certificates therefor duly issued to him.

XI

Two private shareholders of the National Coal Company, the registered owners of two shares of the stock of the National Coal Company standing on its books in their names respectively were present

at the said meeting and by written ballot cast a total of the votes for each of the five persons named in paragraph seven hereof, for whom the votes cast by the Governor-General were given, as averred.

XII

Notwithstanding the fact that prior to the said special meeting of the National Coal Company they had been advised that the Governor-General intended to exercise solely and exclusively the voting power of the shares of stock of the said corporation owned by the Philippine Government, as stated in paragraph III above, the President of the Philippine Senate, the Hon. Manuel Quezon, and the Speaker of the House of Representatives, the Hon. Manuel Roxas, addressed a written communication to the Governor-General of the Philippine Islands, calling upon him to attend a meeting for the purpose of conferring with them with a view to determining by agreement for whom the votes pertaining to the stock of the Government of the Philippine Islands in the National Coal Company should be cast at the said special meeting, receipt of which notice the Governor-General acknowledged but de-

clined for the reasons stated in said Executive Order No. 37 to participate in such meeting.

XIII

Thereupon, the President of the Philippine Senate and the Speaker of the House of Representatives met at the time and place designated in the notice mentioned in the paragraph next preceding and undertook to take, on behalf of the committee mentioned in Section 4 of Act 2705, as amended, the action recorded in the minutes of their said meeting, a copy of which said minutes is hereunto attached for the information of the Court, marked Exhibit "B".

XIV

The President of the Philippine Senate and the Speaker of the House of Representatives of the Philippine Legislature were present at the said special meeting of the shareholders of the National Coal Company, and, notwithstanding the objection and protest of the Governor-General, insisted upon participating in the election of the directors of said corporation, asserting the right to do so jointly as the majority of the committee mentioned in Section 4 of Act 2705, as amended by Section 2 of Act 2822.

XV

Notwithstanding the objection and protest of the Governor-General that they had no legal right to vote the stock in said company owned by and registered in the name of the Government of the Philippine Islands, the President of the Senate and the Speaker of the House of Representatives participated in said meeting and deposited with the inspector of election at said meeting a paper writing which they pretended to be a written ballot for the election of directors of the said corporation, in which paper writing they undertook and attempted to vote the 29,809 shares of the Government of the Philippine Islands in the National Coal Company, which said alleged ballot so deposited by them is in words and figures as follows, to-wit:

"NATIONAL COAL COMPANY
ELECTION OF DIRECTORS—1926

This is to certify that at a meeting duly called and held of the committee created by Sec. 4, Act 2705, as amended, at the office of the Company on December 6, 1926, at 2:30 o'clock in the afternoon, it was resolved that the votes represented by the 29,809 shares held by the Government of the Philip-

pine Islands in the National Coal Company be voted for each of the following named persons as directors of the National Coal Company, to-wit:

ALBERTO BARRETTO
MILTON E. SPRINGER
DALMACIO COSTAS
ANSELMO HILARIO
FRANK B. INGERSOLL

By virtue thereof the said Committee hereby votes all the said 29,809 shares held by the Government of the Philippine Islands in the National Coal Co. in favor of the following persons as directors of the National Coal Company, to-wit:

ALBERTO BARRETTO
MILTON E. SPRINGER
DALMACIO COSTAS
ANSELMO HILARIO
FRANK B. INGERSOLL

(Sgd.) D. COSTAS,
Secretary
of meeting of committee
established by Section 4
of Act 2705, as amended.

COUNTERSIGNED:

(Sgd.) MANUEL L. QUEZON,
President,
Philippine Senate.
Member.

(Sgd.) MANUEL ROXAS,
Speaker,
House of Representatives.
Member."

XVI

The persons named in the alleged ballot set forth in the paragraph next preceding were at the time said special meeting was held, and are now, shareholders of record of the National Coal Company, in their own right.

XVII

There were present at the said special meeting, by person or by proxy, six private shareholders, the owners of record of fifteen of the shares of the National Coal Company, who cast their ballots for the election of the same persons named in the alleged ballot set forth in Paragraph XV hereof.

XVIII

Thereupon, upon the written report of his canvass of the ballots made by the inspector of election, the chairman of the said special meeting declared that Milton E. Springer, Dalmacio Costas, Anselmo Hilario and Frank B. Ingersoll had each received 29,821 of the votes cast at the said election, and that Alberto Barretto had received 29,822 of said votes, and that they and each of them were the directors elect of the National Coal Company.

XIX

Thereupon, the Governor-General protested the ruling of the chairman with respect to the declaration of the election of Milton E. Springer, Dalmacio Costas and Anselmo Hilario, and demanded that the chairman should declare the election of each and every one of the five persons for whom his ballot was cast; but the chairman refused to amend his decision in accordance with such demand, whereupon the Governor-General renewed his protest.

XX

A true copy of the minutes of the proceedings had at the said special meeting of the shareholders

of the National Coal Company is hereunto attached, marked Exhibit "C", and made a part hereof.

XXI

Thereafter, to-wit, the 6th day of December, 1926, the Chairman of the said shareholders' meeting called a meeting to be attended by the persons above named declared by him to have been elected to membership in the Board of Directors of the National Coal Company, at which meeting there were present the above named defendants who participated therein, claiming to have been duly elected as directors at said meeting; and the said defendants participated in the election of a president and secretary of said company, and in the exercise of the privileges and the performance of the duties of directors of the National Coal Company.

XXII

That each and everyone of the defendants above named has usurped, intruded into, and unlawfully exercised the office of director of the said National Coal Company, and does now and unless ousted therefrom will continue to usurp, intrude into, and unlawfully exercise such office, and to exclude

therefrom the rightful incumbents, to-wit: Salvador Lagdameo, H. L. Heath and Romarico Agcaoili, who, by virtue of their due election thereto, as herein averred, and their acceptance of such office, claim to be entitled and are entitled to the offices so usurped, intruded into, and unlawfully exercised by the said defendants.

WHEREFORE the plaintiff prays that judgment be rendered that the defendants herein, and each of them, to-wit, Milton E. Springer, Anselmo Hilario and Dalmacio Costas are not entitled to membership in the board of directors of the National Coal Company and that they be ousted and altogether excluded from said offices and perpetually enjoined from exercising any of the powers inherent therein, with costs.

Manila, P. I., December 7, 1926.

(Sgd.) DELFIN JARANILLA
Attorney-General of the
Philippine Islands.
Attorney for Plaintiff.

(Sgd.) F. C. FISHER,
(Sgd.) HUGH C. SMITH,
Special Counsels for Plaintiff.

EXHIBIT "A"

BY-LAWS OF
THE NATIONAL COAL COMPANY

ARTICLE I

Stockholders and Stockholders' Meetings

Sec. 1. The regular annual meeting of stockholders for the election of directors and for the transaction of such other business as may be proper shall be held at 3:00 p. m. on the second Monday of August of each year in the City of Manila at the principal office of the Company.

Sec. 2. Upon the request of the stockholders representing one-third of all the subscribed capital stock of the Company, or upon request of the Board of Directors, a special stockholders' meeting shall be promptly called by the President. The secretary shall give due notice to each stockholder as to the time and place of all special meetings, but failure of any stockholder to receive such notice shall not operate to invalidate any action taken at such meetings.

Sec. 3. The holder or holders of a majority of all the subscribed capital stock of the Company,

as shown by the records, shall constitute a quorum for the purpose of transacting business at stockholders' meetings, and in case any stockholder is unable to be present in person, he may be represented by proxy duly authorized in writing as follows:

> "I hereby appoint ..... my proxy to represent me in person at the stockholders' meeting of the National Coal Company to be held on ....., with full power to vote my stock and otherwise act for me in any matter which may come before said meeting.
>
> (Sgd.) ....."

If at any stockholders' meeting a quorum of the stock shall not be present, the meeting may be adjourned from time to time until a quorum shall be obtained.

Sec. 4. The business conducted at any special stockholders' meeting need not be confined to the particular purpose for which said meeting shall have been called, but may extend to any matter whatsoever within their jurisdiction, provided it is approved by a majority of the stockholders.

ARTICLE II

Directors and Directors' Meetings

Sec. 1. The members of the Board of Directors shall be elected at the annual stockholders' meeting and shall hold office until their successors are duly elected. In case of vacancy on the Board of Directors through resignation or otherwise, said vacancy shall be filled by appointment by the committee created by Section 4 of Act 2705.

Sec. 2. The Board of Directors shall hold regular meetings at 3:00 p. m. on the second Monday of each month, and may hold special meetings at any time subject to the call of the President, or of a majority of the Board. A majority of the members of the Board shall constitute a quorum for the purpose of transacting business. The minutes of all meetings shall be attested by the Secretary and certified by the President.

Sec. 3. The Board of Directors shall have such powers as may be provided by law, or as they may otherwise legally perform; but no contract for the leasing or purchase of coal bearing lands shall be entered into without the prior consent of a majority of the stockholders.

ARTICLE III

Officers and Employees

Sec. 1. The President shall be the chief executive of the Company. He shall preside at all directors' meetings and perform such other duties as may be provided in these By-Laws or as may otherwise pertain to his position.

Sec. 2. The Board of Directors shall elect from its own members a Vice-President, who shall act as President in the absence of the latter.

Sec. 3. The Treasurer shall receive all moneys of the Company and shall deposit same in the Philippine National Banl in the name of and to the credit of the Company, subject to withdrawal by checks signed by the Treasurer in his official capacity and countersigned by the President The Treasurer shall make such report to the Board of Directors at each monthly meeting as may be required by said Board.

Sec. 4. The Secretary shall keep the records of all stockholders and board meetings and shall preserve all documents, reports, and records pertaining to the Company. He shall perform such

other duties as may be required by the Board of Directors.

Sec. 5. There may be a general manager, a coal expert and such other officers and employees as the Board of Directors shall determine to be essential for the efficient conduct of the business of the Company.

ARTICLE IV

Executive Committee

Sec. 1. The Board of Directors may appoint from its own members an executive committee to act during the periods when the Board is not in session, and to exercise during such periods any or all powers which may lawfully be delegated to such committee by said Board.

ARTICLE V

Miscellaneous Provisions

Sec. 1. All stock certificates, when issued, shall bear the seal of the Company, and shall be signed by the President and attested by the Secretary. No stock shall be transferred on the books

of the Company without there having been first surrendered to the Secretary for cancellation the certificate constituting the basis for such transfer, properly endorsed by the holder of record as shown by the Company's stock-book. No transfer of stock shall be recorded during the ten days immediately preceding the annual stockholders' meeting.

Sec. 2. Dividends may be declared and paid out of the net profits of the business of the Company as and when the Board of Directors may elect.

Sec. 3. The fiscal year of the Company shall terminate on the last day of June of each year, and a full and complete audit of the books and accounts shall thereupon be made. The President shall present at the annual meeting of stockholders full reports of the conditions of the Company for the fiscal year immediately preceding said annual meeting.

Adopted by unanimous vote of all stock at the special stockholders' meeting held April 4, 1917.

(Sgd.) V. MADRIGAL,
President.

(Sgd.) D. COSTAS,
Secretary.

We, the undersigned, being a majority of the Board of Directors of the National Coal Company, do hereby certify that the foregoing is a true and exact copy of the By-Laws adopted by the stockholders at their meeting held April 4, 1917, and which are now on file in the principal office of the Corporation.

In witness whereof, we have hereunto set our hands this 8th day of August, 1917, and the Secretary of said Company has countersigned this certificate on this same date.

(Sgd.) V. MADRIGAL,
Director.

(Sgd.) C. H. FRENCH,
Director.

(Sgd.) MILTON E. SPRINGER,
Director.

(Sgd.) RAFAEL CORPUS,
Director.

(Sgd.) D. COSTAS,
Director.

COUNTERSIGNED:

(Sgd.) D. COSTAS,
Secretary.

EXHIBIT "B".

Minutes of Meeting of Committee Created by Act 2705 for the Purpose of Voting the Stock Held by the Government of the Philippine Islands in the National Coal Co. Held at the Offices of Said Company at 2:30 o'clock in the Afternoon of December 6, 1926, Pursuant to Written Request and Call Duly Made Upon His Excellency, the Governor-General of the Philippine Islands Dated November 29, 1926.

PRESENT: Hon. Manuel L. Quezon, President of the Senate. Hon. Manuel Roxas, Speaker, House of Representatives.

ABSENT: His Excellency, the Governor-General of the Philippine Islands.

Hon. Manuel L. Quezon, ranking member of the committee present at the meeting, called the meeting to order, and with the consent of the other member present, acted as Chairman thereof.

Upon invitation, Mr. Dalmacio Costas, Secretary of the National Coal Company, attended the meeting, and was unanimously designated as Sec-

retary of the meeting, and kept the minutes of the proceedings.

The Secretary reported that there were present at the meeting two of the three members of the committee, thus constituting the quorum necessary for the transaction of business.

The Secretary read to the meeting the request and call for the meeting, together with the affidavit regarding service thereof upon His Excellency, the Governor-General. On motion, duly made and approved, it was unanimously

> RESOLVED, That the said request and call as well as the affidavit concerning service thereof upon His Excellency, the Governor-General, be spread upon the minutes of this meeting.

Said request and call and affidavit as to service are as follows:

PHILIPPINE ISLANDS }
CITY OF MANILA } ss.

GUILLERMO CABRERA, being first duly sworn, deposes and says:

That he is the private secretary of Hon. Manuel L. Quezon, President of the Philippine Senate;

That on the 1st day of December, 1926, he caused to be delivered personally to the Office of His Excellency, the Governor-General of the Philippine Islands, Hon. Leonard Wood, in an enclosed envelope the request and call for a meeting of the committee created by Act 2705, for the purpose of voting the stock held by the Government of the Philippine Islands in the National Coal Co., to be held on or before 2:30 p. m. of December 6, 1926, copy of which request and call is hereto attached and made a part hereof.

(Sgd.) GUILLERMO CABRERA.

Subscribed and sworn to before me, the undersigned notary public, this 6th day of December, 1926, affiant exhibiting to me his cedula certificate No. F-15195, issued at Manila, P. I., on Jan. 25, 1926.

(Sgd.) JESUS G. BARRERA,
Notary Public,
My Com. expires Dec. 31, 1926.

Doc. No. 99.
Page No. 53.
Book II.
Series 1926.

November 29, 1926.

SIR:

Having received notice that a meeting of the stockholders of the National Coal Company for the purpose of electing a new Board of Directors of the company will be held on December 6, 1926, at 3:00 p. m. at the office of said company, the undersigned, as members of the committee created by Act No. 2705 for the purpose of voting the stock held by the Government of the Philippine Islands in the National Coal Company, hereby request that you call a meeting of the said committee to be held on or before 2:30 p. m. of December 6, 1926, for the purpose of deciding upon the manner in which the said stock shall be voted upon all matters that may properly come before the said meeting including the election of directors of the said company.

If you should not find it convenient to call such a meeting, you are hereby respectfully notified that the undersigned will hold a meeting of the said committee at 2:30 p. m. of December 6, 1926, at the of-

fice of the National Coal Company for the purpose above mentioned.

Very respectfully,

(Sgd.) MANUEL ROXAS,
Speaker,
House of Representatives.

(Sgd.) MANUEL L. QUEZON,
President,
Philippine Senate.

HON. LEONARD WOOD,
Governor-General of the
Philippine Islands,
Manila.

The Chairman announced that, as indicated in said request and call, the purpose of the meeting is to decide upon the manner in which the stock held by the Government of the Philippine Islands in the National Coal Company shall be voted in the meeting of stockholders of the Company which has been called for December 6, 1926, at 3:00 o'clock in the afternoon, particularly with respect to the election of the directors of the Company.

On motion duly made and approved, it was UNANIMOUSLY

RESOLVED, that this Committee vote the stock held by the Government of the Philippine Islands in the National Coal Company for the purpose of designating Hon. Alberto Barretto, as chairman, and Mr. Dalmacio Costas, as secretary, of the meeting of stockholders, to be held at the office of the Company on December 6, 1926, at 3:00 o'clock in the afternoon, and at any adjournment or adjournments thereof.

On motion duly made and approved, it was UNANIMOUSLY

RESOLVED, that the votes represented by the stock held by the Government of the Philippine Islands in the National Coal Co. be cast for and in favor of the following persons as directors of said company:

ALBERTO BARRETTO,
MILTON E. SPRINGER,
DALMACIO COSTAS,
ANSELMO HILARIO,
FRANK B. INGERSOLL, and

FURTHER RESOLVED, that a ballot in the form hereinafter set forth be ordered made and signed by the Secretary of this

meeting and countersigned by the members of this committee present at this meeting, and filed with the Secretary of the Company at the meeting of the stockholders of said company to be held at 3:00 o'clock in the afternoon of December 6, 1926, or at any adjournment or adjournments thereof:

"NATIONAL COAL COMPANY
ELECTION OF DIRECTORS—1926

This is to certify that a meeting duly called and held of the committee created by Sec. 4, Act 2705, as amended, at the office of the company on December 6, 1926, at 2:30 o'clock in the afternoon it was resolved that the votes represented by the .....shares held by the Government of the Philippine Islands in the National Coal Co. be voted for each of the folowing named persons as directors of the National Coal Co., to wit:

ALBERTO BARRETTO,
MILTON E. SPRINGER,
DALMACIO COSTAS,
ANSELMO HILARIO,
FRANK B. INGERSOLL,

By virtue whereof the said Committee hereby votes all the said ..... shares held by the

Government of the Philippine Islands in the National Coal Co. in favor of the following persons as directors of the National Coal Co., to wit:

ALBERTO BARRETTO,
MILTON E. SPRINGER,
DALMACIO COSTAS,
ANSELMO HILARIO,
FRANK B. INGERSOLL,

DALMACIO COSTAS,
Secretary
of meeting of committee established by Section 4 of Act 2705, as amended.

COUNTERSIGNED:

MANUEL L. QUEZON,
President,
Philippine Senate.
Member.

MANUEL ROXAS,
Speaker,
House of Representatives.
Member."

On motion, duly made and approved, it was UNANIMOUSLY

RESOLVED, that the members of this committee present at this meeting

attend in person the meeting of stockholders of the National Coal Company, to be held on December 6, 1926, at 3:00 o'clock in the afternoon, in the offices of said Company at the China Bank Building, Manila, and any adjournment or adjournments thereof, and that a certified copy of the minutes of this meeting be presented to the President of the Company during said meeting.

There being no further business, on motion duly made and approved, the meeting adjourned.

(Sgd.) D. COSTAS,
Secretary of Meeting.

APPROVED:

(Sgd.) MANUEL L. QUEZON,
President of the
Philippine Senate.
Member.

(Sgd.) MANUEL ROXAS,
Speaker,
House of Representatives.
Member.

I HEREBY CERTIFY that the foregoing, consisting of eight (8) pages including the present page, constitute a true and

and exact copy of the minutes of the proceedings had at a meeting of the Committee created by Act No. 2705, as amended, for the purpose of voting the stock held by the Government of the Philippine Islands in the National Coal Company, duly called and held at the office of said Company, on December 6, 1926 at 2:30 o'clock in the afternoon.

(Sgd.) D. COSTAS,
Secretary of the Meeting.

EXHIBIT "C".

MINUTES OF STOCKHOLDERS' MEETING OF THE NATIONAL COAL COMPANY

A meeting of the stockholders of the National Coal Company, a corporation created by Act 2705 of the Philippine Legislature, as amended by Act 2822 thereof, was held at the office of the corporation, China Bank Building, in the City of Manila, Philippine Islands, the 6th day of December, 1926, at 3:00 o'clock p. m.

The meeting was called to order by the President of the Company, the Hon. Alberto Barretto, who presided the meeting as Chairman thereof. The Chairman stated that no election of directors

was had at the time designated by the by-laws for the regular annual meeting, on account of the lack of a quorum; that the present meeting had been convened to elect directors pursuant to call, of which notice had been given, as required by the by-laws to the owners of all outstanding shares of the corporation, which call reads as follows:

"NATIONAL COAL COMPANY
CALL FOR A SPECIAL MEETING OF THE SHAREHOLDERS OF THE NATIONAL COAL COMPANY

The board of directors of the Company having designated Malacañang Palace in the call for the general meeting of shareholders of the Company for the election of directors, and other matters properly to be considered at general meetings as the place in which such meeting should be held; and this being contrary to the provisions of Article I, Section 1, of the by-laws of the Company which designates the principal office of the corporation as the place for that purpose; and the said call having being declared void, by order of the president, a special general meeting of the shareholders of this Company is hereby called to be held the 6th day of December, 1926, at 3:00 o'clock P. M. in the principal office of said Company, China

Bank Building, Calle Dasmariñas, corner of Juan Luna, fourth floor, rooms Nos. 409-410, for the purpose of electing the directors of the Company, and considering such other matters as may properly come before a general meeting; and to this end notice is hereby given to each and every one of the shareholders of Compañia Carbonera Nacional, also known as the National Coal Company.

Manila, P. I., November 20, 1926.

BY ORDER OF THE PRESIDENT

D. COSTAS
Secretary-Treasurer"

Mr. Dalmacio Costas, the Secretary of the Company, was present, and acted as the Secretary of the meeting.

The Secretary presented to the meeting a certified list of the stockholders of record of the Company as of November 26, 1926, the last day allowed by the By-Laws of the Company for any transfer of stock prior to this meeting. Said certified list is as follows:

NATIONAL COAL COMPANY
LIST OF STOCKHOLDERS OF RECORD
November 26, 1926.

	Cert. No.	*Number of Shares*
P. I. Government	(6)	15,300
P. I. Government	(25)	14,509
Purchased by P. I. Government not yet transferred on stock book of the company:		
Asia Banking Corporation..	(35)	100
P. J. Moore	(22)	20
Hilton Carson	(20)	10
Domingo M. Nieto	(16)	10
Felix M. Salas Rodriguez ..	(7)	10
Pedro Lozada	(21)	5
Eleuterio Matute	(1)	4
Manuel de la Rama Conlu ..	(8)	2
Victoria de la Victoria Conlu	(9)	2
Fortunata T. Salas Rod ...	(10)	2
Ramón de la Rama Conlu ..	(11)	1
Esteban Respal Conlu	(13)	1
María Conlu de la Rama ...	(14)	1
Gema Conlu	(27)	1
Galicano Apacible	(29)	1
Rosalia Enage	(36)	1
Pablo B. Herrera	(18)	1

Individual Stockholders:

Anselmo Hilario	(3)	10
Alberto Barretto	(39)	1
H. L. Heath	(41)	1
D. Costas	(2)	1
Romarico Agcaoili	(40)	1
Frank B. Ingersoll	(42)	1
Vicente Madrigal	(19)	1
Milton E. Springer	(5)	1
Laureano Mañalac	(28)	1
E. J. Westerhouse	(31)	1
TOTAL		30,000

The Secretary informed the meeting that the shares of stock represented by certificates numbered 1, 7, 8, 9, 10, 11, 13, 14, 16, 18, 20, 21, 22, 27, 35 and 36, have all been acquired by the Government of the Philippine Islands according to certification made by the Insular Treasurer, and that all said certificates of stock have been endorsed in favor of the Government of the Philippine Islands, with the exception of certificates numbered 1 and 18 which are endorsed in favor of

the Insular Treasurer and certificate numbered 29 which is endorsed in favor of the National Coal Company.

After reading the roll, the Secretary reported that the following stockholders were present in person:

Alberto Barretto	1
Frank B. Ingersoll	1
Dalmacio Costas	1
Romarico Agcaoili	1

and that the following private stockholders were represented by proxy:

Stockholder	*Proxy*	*No. of Shares*
Anselmo Hilario	Hon. Manuel L. Quezon	10
H. L. Heath	Hon. F. C. Fisher	1
Milton E. Springer	Hon. James Ross	1
Laureano Mañalac	Hon. José Abad Santos	1

Hon. Manuel L. Quezon, President of the Senate, and Hon. Manuel Roxas, Speaker, House of Representatives, presented to the President of the Company a certified copy of the minutes of the meeting of the committee created by Act No. 2705, as amended, for the purpose of voting the stock

held by the Government of the Philippine Islands in the National Coal Company, duly called and held at the office of said Company on December 6, 1926, at 2:30 o'clock in the afternoon, and in pursuance of a resolution duly approved by said committee as set forth in said minutes, informed the chair that they represented the stock held by the Government of the Philippine Islands at this meeting for the purpose of voting the same in accordance with the resolutions contained in said minutes.

His Excellency, Leonard Wood, the Governor-General, acting through his proxy, Hon. F. C. Fisher, stated that in his opinion and in the opinion of the Attorney-General of the United States, and the Judge Advocate General of the Army of the United States, the provisions of Section 4 of Act 2705, as amended, of the Philippine Legislature, is void insofar as it designates the President of the Senate and the Speaker of the House of Representatives as members of a committee to vote the stock of the National Coal Company, created by said Act 2705, owned by the Government of the Philippine Islands. He further stated that he objected to the presence at this meeting of the President of the Se-

nate, the Honorable Manuel L. Quezon, and the Speaker of the House of Representatives, the Honorable Manuel Roxas, in their asserted and pretended capacity (as asserted and claimed by them in their letter to the Governor-General dated November 16th, 1926, and as asserted and claimed at this meeting, or otherwise claimed by them) as representatives of the Government of the Philippine Islands in any wise or to any extent in connection with voting or representing the stock in said National Coal Company owned by the Philippine Government, for the election of directors of said Company or otherwise, and that he protests their right to participate in this meeting, as they have announced they will do, and protests their right to vote for the election of directors or for any other purpose, the shares of stock of the Government of the Philippine Islands, and protests their right in any wise to represent said stock in this meeting.

The Governor-General through his said proxy, then asserted in himself as Governor-General and as the successor in that office to the Governor-General who subscribed for said stock on behalf of the Government of the Philippine Islands under the

provisions of Act number 2705 of the Philippine Legislature, the right and authority to represent said stock and to cast the vote of said stock for the election of directors of said Company and for all other purposes.

The Honorable Manuel L. Quezon, President of the Philippine Senate, and the Honorable Manuel Roxas, Speaker of the House of Representatives of the Philippine Legislature, protested all of the aforesaid claims of the Governor-General, and asserted the right to vote the stock held by the Government of the Philippine Islands at this meeting, by virtue of the provisions of Act No. 2705, as amended, and the resolution duly adopted by the committee created by the said Act for the purpose of voting the said stock, which assertion of right they stated to be made upon the following grounds, *inter alia*:

a) That Section 4 of Act 2705, as amended by Section 2 of Act 2822 of the Philippine Legislature, provides, *inter alia*, that the voting power of all stock in the National Coal Company owned by the Government of the Philippine Islands shall be vested exclusively in a committee

consisting of the Governor-General, the President of the Senate and the Speaker of the House of Representatives;

b) That Act No. 2705, as amended, being the corporate charter of this Company, its provisions are absolutely binding upon this Company and all acts of the Company must be in strict accordance therewith;

c) That Act No. 2705, as amended, is a law duly enacted by the Philippine Legislature, and its provisions must be followed unless and until pronounced null and void by a Court of competent jurisdiction;

d) That the Governor-General has no authority by Executive Order to declare null and void any law duly passed by the Philippine Legislature, approved by his predecessor in office, reported to the United States Congress and by that body not disapproved in any way, shape, or form whatsoever, and for many years enforced and acted upon by the present Governor-General and his predecessors in office; and that therefore the attempted action on the part of the present Governor-General by Executive Order No. 37, to declare Section 4 of Act No. 2705, as amended, null and void, is absolutely void and of no effect; and

e) That the committee created by Act No. 2705, as amended, for the purpose of voting the stock held by the Government of the Philippine Islands, is a legal body, and the resolutions duly passed by said committee at a meeting duly called and convened, are binding upon this Company.

After considering the contentions of the Governor-General on the one hand, and those of the Hon. Manuel L. Quezon, as President of the Senate and Hon. Manuel Roxas, as Speaker of the House of Representatives, on the other, the Chairman of the meeting stated that, with due respect to the claims of His Excellency, the Governor-General, in view of the express provisions of Act No. 2705, as amended, which is the corporate charter to which the National Coal Company owes its very existence, determining the manner and by whom the stock held by the Government of the Philippine Islands should be voted, he could not recognize any other authority as representing the said stock but the committee created by said Act, and that, therefore, he regretted his inability to recognize His Excellency, Leonard Wood, in his sole capacity as Governor-General of the Philippine Is-

lands, as lawfully representing the stock of the Government of the Philippine Islands. On the other hand, having before him the record of the proceedings of the committee created by Act No. 2705, as amended, for the purpose of exercising the voting powers of the stock held by the Government of the Philippine Islands, and finding the contention of the Hon. Manuel L. Quezon and Hon. Manuel Roxas, in accordance with the action of said committee, the chair decided to recognize, as it did thereby recognize, the right of the said Hon. Manuel L. Quezon, as President of the Senate, and Hon. Manuel Roxas, as Speaker of the House of Representatives, both as members of the committee created by Act No. 2705, as amended, to represent and vote all the stock held by the Government of the Philippine Islands at this meeting; to which ruling the Governor-General, through his proxy, the Hon. F. C. Fisher, made known his protest and demanded that it be entered of record on the minutes.

In view of the decision of the chair, the Secretary announced that of the 30,000 shares of the capital stock of the Company then issued and outstanding 29,826 shares were represented at the meeting, as follows:

The Government of the Philippine Islands	29,809
Anselmo Hilario	10
Alberto Barretto	1
Milton E. Springer	1
Dalmacio Costas	1
Frank B. Ingersoll	1
Romarico Agcaoili	1
Laureano Mañalac	1
H. L. Heath	1
TOTAL	29,826

being more than sufficient to constitute a quorum.

On motion, duly made and seconded, and carried, it was—

RESOLVED, that the reading of the minutes of the previous meetings of stockholders, be dispensed with and that the said minutes be approved.

On motion, duly made and seconded, and carried, it was—

RESOLVED, that the reading of the annual report of the directors be dispensed with and that the annual balance sheets attached thereto be approved and the recommendations contained therein be received and filed.

The Governor-General, through his proxy, objected to the consideration of the foregoing motion on the ground that such business was not included in the call. This objection was overruled by the Chairman upon the ground that the consideration of such business is authorized by the terms of the call, to which ruling the Governor-General by his proxy noted this protest.

The Chairman announced that the next business in order was the election of five directors to serve during the ensuing year and until the election and qualification of their successors.

Thereupon Mr. Jose Abad Santos, seconded by Mr. James Ross, nominated

Messrs. Alberto Barretto
Milton E. Springer
Dalmacio Costas
Anselmo Hilario, and
Frank B. Ingersoll.

Mr. F. C. Fisher, seconded by Mr. Ingersoll, nominated

Messrs. Alberto Barretto
Romarico Agcaoili
Frank B. Ingersoll
H. L. Heath, and
Salvador Lagdameo.

There being no further nominations the Chairman declared the nominations closed.

The meeting then proceeded to vote by written ballot for the election of directors.

When the President of the Senate and the Speaker of the House of Representatives presented their ballot, the Governor-General through his proxy, renewed his protest as set out above, and demanded, for the reasons stated, that such ballot be not counted but that it be disregarded.

When the Governor-General through his proxy, presented his ballot, the Honorable Manuel L. Quezon and the Honorable Manuel Roxas renewed their protest as set out above and for the reasons stated demanded that the ballot of the Governor-General be not counted, but that it be disregarded. Objection was further made against the nomination by the Governor-General of Salvador Lagdameo, on the ground that he is not a stockholder of record, in his own right.

The ballots were then delivered to the Secretary of the meeting, who received the same, canvassed the votes cast, and made written report of said canvass as follows:

"This is to certify that I have carefully examined the ballots delivered to me by all the persons present at the meeting of the shareholders of the National Coal Company and find that votes have been cast as follows:

"Counting the votes cast by the Governor-General, through his proxy, and excluding those cast by the Hon. Manuel L. Quezon and Hon. Manuel Roxas, on behalf of the Committee created by Act No. 2705, as amended, the following is the result:

Alberto Barretto	29,822	votes
Frank B. Ingersoll	29,822	„
Romarico Agcaoili	29,810	„
H. L. Heath	29,810	„
Salvador Lagdameo ...	29,810	„
Milton E. Springer ...	12	„
Dalmacio Costas	12	„
Anselmo Hilario	12	„

"The ballot cast by the Governor-General reads as follows:

"NATIONAL COAL COMPANY
Election of Directors
December 6th, 1926.

"On behalf of the Governor-General of the Philippine Islands, and as his proxy, I hereby vote for each of the following named

persons, namely, Alberto Barretto, Frank B. Ingersoll, Romarico Agcaoili, Salvador Lagdameo and H. L. Heath."

as directors of the National Coal Company to be elected at the special meeting of the shareholders held December 6th, 1926, the 29,809 shares held by and registered in the name of the Government of the Philippine Islands.

For the Governor-General of
the Philipine Islands
F. C. FISHER,
Proxy.

"And that by counting the ballot cast by the Hon. Manuel L. Quezon, and Hon. Manuel Roxas, on behalf of the Committee created by Act No. 2705, as amended, and excluding the ballot cast by the Governor-General, through his proxy, the result is as follows:

Alberto Barretto	29,822	votes
Frank B. Ingersoll	29,822	„
Milton E. Springer ...	29,821	„
Dalmacio Costas	29,821	„
Anselmo Hilario	29,821	„
Romarico Agcaoili	1	vote
H. L. Heath	1	„
Salvador Lagdameo ...	1	„

"The said ballot cast by the Hon. Manuel L. Quezon and Hon. Manuel Roxas, on behalf of the Committee created by Act No. 2705, as amended, reads as follows:

"NATIONAL COAL COMPANY
ELECTION OF DIRECTORS—1926.

This is to certify that at a meeting duly called and held of the committee created by Sec. 4, Act 2705, as amended, at the office of the Company on December 6, 1926, at 2:30 o'clock in the afternoon, it was resolved that the votes represented by the 29,809 shares held by the Government of the Philippine Islands in the National Coal Company be voted for each of the following named persons as directors of the National Coal Company to wit:

ALBERTO BARRETTO
MILTON E. SPRINGER
DALMACIO COSTAS
ANSELMO HILARIO
FRANK B. INGERSOLL

"By virtue whereof the said Committee hereby votes all the said 29,809 shares held by the Government of the Philippine Islands in the National Coal Co. in favor of the fol-

lowing persons as directors of the National Coal Co., to wit:

ALBERTO BARRETTO
MILTON E. SPRINGER
DALMACIO COSTAS
ANSELMO HILARIO
FRANK B. INGERSOLL

(Sgd.) D. COSTAS,
Secretary
of meeting of committee
established by Section 4 of
Act 2705, as amended.

COUNTERSIGNED:

(Sgd.) MANUEL L. QUEZON,
President,
Philippine Senate.
Member.

(Sgd.) MANUEL ROXAS,
Speaker,
House of Representatives.
Member."

IN WITNESS WHEREOF, I have signed this certificate at Manila, P. I., this 6th day of December, 1926.

(Sgd.) D. COSTAS,
Secretary of the Meeting.

Thereupon, the Chairman announced that in accordance with his previous decision recognizing the Hon. Manuel L. Quezon, President of the Senate, and the Hon. Manuel Roxas, Speaker, House of Representatives, to represent and vote at this meeting the shares of stock held by the Government of the Philippine Islands, the ballot presented by His Excellency, the Governor-General through his proxy was rejected, and he therefore declared that the following persons had received the number of votes lawfully cast at the election as set forth opposite their respective names:

Messrs.	ALBERTO BARRETTO ..	29,822 votes
	MILTON E. SPRINGER	29,821 „
	DALMACIO COSTAS ..	29,821 „
	ANSELMO HILARIO ..	29,821 „
	FRANK B. INGERSOLL	29,821 „

and thereupon declared them to be the duly elected directors of the Company.

His Excellency, the Governor-General, through his proxy, thereupon made known his protest against the ruling of the Chairman.

On motion, duly made and seconded, and carried, it was

RESOLVED, That the newly elected directors of the Company as recognized as the Chairman be, and they hereby are, authorized and requested to hold a meeting immediately upon the adjournment of the meeting for the purpose of electing the officers of the Company for the ensuing year.

The Governor-General through his proxy voted against this motion and requested that a meeting of the persons for whom his votes were cast at this election, and no others, be called forthwith for the purpose of organizing by the election of officers.

There being no further business the meeting adjourned.

(Sgd.) D. COSTAS,
Secretary of the Meeting.

APPROVED:

(Sgd.) ALBERTO BARRETTO,
Chairman.

On the 9th day of December, 1926, the Clerk of the Court issued the following order:

(CAPTION AND TITLE OMITTED)

Messrs. Milton E. Springer,
Dalmacio Costas and
Anselmo Hilario,
Manila, P. I.

WHEREAS, This Court on the 8th instant approved a resolution, which is quoted below:

> "Considering the petition filed in case G. R. No. 26979, The Government of the Philippine Islands vs. Milton E. Springer, et als., praying, for the reasons given, that judgment be rendered that the defendants therein, and each of them, to wit, Milton E. Springer, Anselmo Hilario, and Dalmacio Costas are not entitled to membership in the board of directors of the National Coal Company and that they be ousted and altogether excluded from said offices and perpetually enjoined from exercising any of the powers inherent therein, with costs, it is ordered that the respondents be required to demur or answer said petition within ten (10) days from notice hereof and from the receipt of copy of said petition."

NOW, THEREFORE, you are hereby ordered to demur or answer within ten days from the receipt of this summons with copy of the petition.

GIVEN BY THE HONORABLE RAMON AVANCEÑA, Chief Justice of the Supreme Court of the Philippine Islands, this 9th day of December 1926.

(Sgd.) V. ALBERT,
Clerk, Supreme Court, P. I.

On the 20th day of December, 1926, the defendants presented the following demurrer to the complaint:

(CAPTION AND TITLE OMITTED)

Now come the above-named defendants, and demur to the complaint of plaintiff herein, and for cause of demurrer allege:

That the complaint does not state facts sufficient to constitute a cause of action; in that -

(1) According to the facts as stated therein, the defendants are rightfully holding the offices of directors of the National Coal Company, and properly exercising the duties and powers thereof.

(2) Act No. 2705 of the Philippine Legislature, as amended by Act No. 2822 thereof, has not been disapproved by the Congress of the United

States. It has been in force and acted upon for a number of years by the executive officers of the Government of the Philippine Islands, including the Governor-General thereof. It is now in full force and effect.

(3) Executive Order No. 37, in so far as it purports to disregard and abrogate section 4 of said Act No. 2705, amended as aforesaid, is null and void and of no legal force and effect.

(4) Said Executive Order No. 37, in so far as it purports to change the manner of voting the stock owned by the Government of the Philippine Islands in the National Coal Company, is unconstitutional and void, for the reason that it impairs the obligation of the contracts existing between the said Government and the defendants herein, as stockholders of the said Company.

(5) The Governor-General is not authorized by law to exercise solely the voting power of such stock owned by the Government of the Philippine Islands.

WHEREFORE, defendants pray judgment that this action be dismissed, and for their costs.

Manila, December 20, 1926.

(Sgd.) JOSE ABAD SANTOS.
(Sgd.) ROSS, LAWRENCE & SELPH.
(Sgd.) PAREDES, BUENCAMINO & YULO.
(Sgd.) ARANETA & ZARAGOZA.
(Sgd.) CHAS. E. TENNEY.
(Sgd.) CAMUS, DELGADO & RECTO.
(Sgd.) MARIANO H. DE JOYA.
Attorneys for Defendants,
317-321 Masonic Temple,
Manila.

Copy received this 20th day
of December, 1926.

(Sgd.) DELFIN JARANILLA,
Attorney-General, Manila.

On the 24th day of December, 1926, the Court issued the following order:

> "The Court directed that the case of Government of the Philippine Islands vs. Springer et al., No. 26979, be set for hearing on Tuesday, January 11, 1927, at 9:00 a. m., each party to be allowed one hour and a half

for oral argument, to follow the usual procedure."

On the 29th day of December, 1926, the parties, both plaintiff and defendant, presented the following petition:

(CAPTION AND TITLE OMITTED)

And now come the Attorney-General and Jose Abad Santos, of counsel with the plaintiff and the defendants above named, respectively, and pray the Court to grant each party to the above-entitled case at least three hours for oral argument upon the demurrer filed by the defendants.

I.

This is a case of first impression in this jurisdiction. The determination of the issues involved in this case will have a far-reaching effect. Not only is the constitutionality of a statute passed by a coordinate branch of the Government drawn into question here, but the Court is called upon to consider the nature and extent of the powers conferred upon the Governor-General by the Organic Law. The decision in this case is bound to set an important precedent.

II.

In other important cases, such as the Judiciary Act case and the Book-keeping Act case, the Court had afforded the parties ample opportunity for oral argument. This is in line with the practice observed by the Supreme Court of the United States in passing upon important cases. Thus one case was argued for eleven days. (Warren, The Supreme Court in United States History, Vol. I, p. 123. In another case "The Court, when Mr. Lee terminated his argument, observed that they would attend to the observations of any person who was disposed to offer his sentiments." (Ibid., Ibid., p. 239.)

We, therefore, submit that this case is preeminently one which presents those special circumstances that call for considerable enlargement of the time for oral argument.

Manila, December 29, 1926.

(Sgd.) DELFIN JARANILLA,
Attorney-General,
Of Counsel with Plaintiff.

(Sgd.) JOSE ABAD SANTOS,
Of Counsel with Defendants.

On the 31st day of December, 1926, the Court issued the following order:

> "Considering the motion of counsel for both parties in case G. R. No. 26979, The Government of the P. I. vs. Milton E. Springer, et als., praying, for the reasons given, that each party be granted at least three (3) hours for oral argument upon the demurrer filed by the defendants, it is ordered that two (2) hours only be granted for that purpose."

On the 11th day of January, 1927, the Court issued the following order:

> "At the hearing of case G. R. No. 26979, The Government of the P. I. vs. Milton E. Springer, et als., there appeared the Attorney-General, Attorney Fisher and Mr. Smith, Judge Advocate of the U. S. Army for the petitioner and Attorney J. Abad Santos, Gregorio Araneta and Judge Ross for the respondents. The Court granted the counsel for the petitioner ten (10) days within which to file a memorandum and another ten days was granted to the counsel for the respondents, from the date they receive copy of the petitioner's memorandum, within which to file their reply memorandum."

On the 17th day of January, 1927, the plaintiff filed its printed brief.

On the 22nd day of January, 1927, the defendants presented the following petition:

(CAPTION AND TITLE OMITTED)

And now comes Jose Abad Santos, of counsel with the defendants above named, and prays the Court for an extension of seven (7) days of the time for filing the brief for the defendants, in view of the fact that the time previously granted is found to be inadequate for the purpose of answering the brief filed for the plaintiff, which is voluminous.

Manila, January 22, 1927.

(Sgd.) JOSE ABAD SANTOS
Of Counsel with Defendants,
317-321 Masonic Temple,
Manila.

CONFORME:

(Sgd.) DELFIN JARANILLA,
Attorney-General,
Of Counsel with Plaintiff,
Manila.

On the 24th day of January, 1927, the Court issued the following order:

"Considering the motion of the counsel for the defendants in case G. R. No. 26979,

the Government of the P. I. vs. Milton E. Springer, et als., praying, for the reasons given, that an extension of seven (7) days' time be given him for filing the brief for the defendants, MOTION GRANTED."

On the 1st day of February, 1927, the defendants presented the following petition:

(CAPTION AND TITLE OMITTED)

And now comes Jose Abad Santos, of counsel with the defendants above named, and prays the Court for another extension of seven (7) days of the time for filing the brief for the defendants. This request is made, in view of the fact that in the preparation of the said brief it has been found necessary to consult cases and authorities which are not easily available and whose search and examination involve considerable time and effort.

Manila, January 31, 1927.

(Sgd.) JOSE ABAD SANTOS,
Of Counsel with Defendants,
317-321 Masonic Temple,
Manila.

Copy hereof has been sent to Hon. Delfin Jaranilla, Attorney-General, of counsel with Plaintiff, Manila.

(Sgd.) JOSE ABAD SANTOS.

On the 1st day of February, 1927, the plaintiff filed the following:

(CAPTION AND TITLE OMITTED)

Now comes the plaintiff in the above-entitled cause and respectfully makes known to this Honorable Court that a copy has been received of the petition of defendants for seven days' extension of the time allowed them within which to file their brief. Plaintiff desires to draw the attention of the Court to the fact that this case is one of great public importance and in which a prompt decision is essential, and therefore respectfully requests that if the extension prayed for is granted, it be upon the express understanding that no further time will be allowed defendants; and further, that the plaintiff may have five days after service upon it of defendants' brief within which to present its answering brief.

Manila, February 1st, 1927.

(Sgd.) DELFIN JARANILLA,
Attorney-General,
Attorney for Plaintiff.

Copy hereof has been sent to Attorney Jose Abad Santos, of Counsel with Defendants.

(Sgd.) DELFIN JARANILLA,
Attorney-General.

On the 2nd day of February, 1927, the Court issued the following order:

> "Considering the motion of counsel for the defendants in case G. R. No. 26979, The Government of the P. I. vs. Milton E. Springer, et als., praying for another extension of seven (7) days' time for filing the defendants' brief therein, and considering the objection thereto filed by the Attorney-General, it is ordered that a last extension of seven (7) days is HEREBY GRANTED as prayed for, and the Attorney-General is granted five (5) days after the service of the defendants' brief, within which to present his reply brief."

Thereafter, the defendants filed their printed brief, and the plaintiff filed its printed reply brief.

On the 1st day of April, the Court rendered the following:

THE GOVERNMENT OF THE PHILIPPINE ISLANDS v. MILTON E. SPRINGER, *et al.*,

No. 26979.

1. CONSTITUTIONAL LAW: GOVERNMENT OF THE PHILIPPINE ISLANDS: DIVISION OF POWERS:—The powers entrusted by the Congress of the United States to

the Government of the Philippine Islands are distributed among three coordinate departments, the executive, the legislative, and the judicial.

2. ID.; ID.; ID.:—No department of the Government of the Philippine Islands may legally exercise any of the powers conferred by the Organic Law upon any of the others.

3. ID.; ID.; ID.:—It is beyond the power of any branch of the Government of the Philippine Islands to exercise its functions in any other way than that prescribed by the Organic Law or by local laws which conform to the Organic Law.

4. ID.; ID.; ID.:—The chief exponent of autonomy in domestic affairs in the Government of the Philippine Islands is the Philippine Legislature. The Governor-General on the other hand is the head of the Government and symbolizes American sovereignty. Under such a political system, lines of demarcation between the legislative and the executive departments are difficult to fix, and attempted encroachments of one on the other may be expected. It is, however, the duty of the Supreme Court, as the guardian of the constitution, to enforce fundamental principles.

5. ID.; ID.; ID.; EXECUTIVE POWER:—The Organic Act vests "the supreme executive power" in the Governor-General of the Philippine Islands. The Governor-General since the approval of the last Organic Act has no prerogative powers.

6. ID.; ID.; ID.; ID.:—The Congress of the United States clearly intended that the Governor-General's power should be commensurate with his responsibility. The Congress never intended that the Governor-General should be saddled with the responsibility of administering the government and of executing the laws but shorn of the power to do so.

7. ID.; ID.; ID.; LEGISLATIVE POWER:—The Organic Act grants general legislative power except as otherwise provided therein to the Philippine Legislature. The legislative power of the Philippine Government is granted in general terms subject to specific limitations.

8. ID.; ID.; ID.; ID.:—Legislative power is the authority, under the constitution, to make laws, and to alter and repeal them. The Legislature cannot lawfully exercise powers which are in their nature essentially executive or judicial. The Legislature cannot make a law and then take part in its execution or

construction. (Cooley's Constitutional Limitations, 7th ed., pp. 126-131, 157-162.)

9. ID.; ID.; ID.; APPOINTMENT TO OFFICE:—The authorities on the question, Where does the power to appoint to public office reside?, reviewed and certain principles deduced therefrom. The particular wording of the constitution involved, and its correct interpretation predetermines the result. The selection of persons to perform the functions of government is primarily a prerogative of the people. The appointment of public officials is generally looked upon as properly an executive function. Appointments may be made by the Legislature or the courts, but when so made should be taken as an incident to the discharge of functions properly within their respective spheres.

10. ID.; ID.; ID.; ID.; APPOINTMENT TO OFFICE IN THE PHILIPPINES:—The right to appoint to office has been confided, with certain well defined exceptions, by the Government of the United States to the executive branch of the government which it has set up in the Philippines. Under a system of government of delegated powers, under which delegation legislative power vests in the Philippine Legislature and executive power vests in the Governor-General, and under which delegation a general power of ap-

pointment resides in the Governor-General and a specified power of appointment resides in the Philippine Legislature, the latter cannot directly or indirectly perform functions of an executive nature through the designation of its presiding officers as majority members of a body which has executive functions.

11. ID.; ID.; ID.; ID.; ID.:—The Legislature may add to, but may not diminish, the power of appointment of the Governor-General.

12. ID.; ID.; ID.; ID.; ID.:—The exceptions made in favor of the Legislature as to appointments to office strengthen rather than weaken the grant to the executive. The expression of one thing in the constitution is necessarily the exclusion of things not expressed.

13. ID.; ID.; ID.; ID.; ID.:—Appointment to office in the Philippines is intrinsically an executive act involving the exercise of discretion.

14. ID. ; ID.; ID.; ID.; ID.:—The decision of the United States Supreme Court in the case of Myers v. United States (1926, U. S. Sup. Ct. Adv. Ops. p. 27) followed.

15. ID.; ID.; ID.; ID.; PUBLIC OFFICERS:—Membership in the voting Committee creat-

ed for the National Coal Company is an office or executive function.

16. ID.; ID.; ID.; CORPORATIONS:—The incorporation of the National Coal Company has not served to disconnect the company or the stock which the Government owns in it from the Government and executive control.

17. ID.; ID.; ID.; ID.:—The Legislature is empowered to create and control private corporations.

18. ID.; ID.; ID.; ID.:—The National Coal Company is a private corporation.

19. ID.; ID.; ID.; ID.:—By becoming a stockholder in the National Coal Company, the Government divested itself of its sovereign character so far as respects the transactions of the corporation.

20. ID.; ID.; ID.; ID.:—The National Coal Company remains an agency or instrumentality of government.

21. ID.; ID.; ID.; ID.:—The Government, like any other stockholder, is justified in intervening in the transactions in the corporation, and in protecting its property rights in the corporation.

22. ID.; ID.; ID.; ID.:—The duty of caring for government property is neither judicial nor legislative in character but is executive.

23. ID.; ID.; ID.; RULE OF PARTIAL INVALIDITY:—The striking out may not necessarily be by erasing words, but it may be by disregarding the unconstitutional provision and reading the statute as if that provision was not there.

24. ID.; ID.; ID.; RATIFICATION BY CONGRESS:—A territorial statute invalid when enacted is not validated by the failure of the Congress expressly to disapprove it.

25. ID.; ID.; ID.; PUBLIC OFFICERS:—Although there may be a *de facto* officer in a *de jure* office, there cannot be a *de facto* officer in a *de facto* office.

26. ID.; ID.; ID.; VOTING COMMITTEE FOR NATIONAL COAL COMPANY:— So much of section 4 of Act 2705, as amended by section 2 of Act 2822, as purports to vest the voting power of the government stock in the National Coal Company in the President of the Senate and the Speaker of the House of Representatives, is unconstitutional and void.

27. EXTRAORDINARY LEGAL REMEDIES; QUO WARRANTO:—In *quo warranto* proceedings, the failure of the defendant to prove his title does not establish that of the plaintiff. The inquiry may go in *quo warranto* proceedings to the extent of determin-

ing the validity of an Act authorizing offices.

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

IN BANC

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff.	No. 26979 Submitted: Promulgated: Present: Avanceña, C. J. Johnson, Street, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ.
vs	
MILTON E. SPRINGER, DALMACIO COSTAS, and ANSELMO HILARIO, Defendants.	

x.....x

DECISION

MALCOLM, J.:—

This is an original action of *quo warranto* brought in the name of the Government of the Phil-

ippine Islands against three directors of the National Coal Company who were elected to their positions by the legislative members of the committee created by Acts 2705 and 2822. The purpose of the proceeding is to test the validity of the part of section 4 of Act 2705, as amended by section 2 of Act 2822, which provides that "The voting power of all such stock (in the National Coal Company) owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

The material facts are averred in the complaint of the plaintiff and admitted in the demurrer of the defendants.

The National Coal Company is a corporation organized and existing by virtue of Act 2705 of the Philippine Legislature as amended by Act 2822, and of the Corporation Law. By the terms of the charter of the corporation, the Governor-General was directed to subscribe on behalf of the Government of the Philippine Islands for at least fifty-one per cent of the capital of the corporation. The

Government eventually became the owner of more than ninety-nine per cent of the thirty thousand outstanding shares of stock of the National Coal Company. Only nineteen shares stand in the names of private individuals.

On November 9, 1926, the Governor-General promulgated Executive Order No. 37. Reference was made therein to opinions of the Judge Advocate General of the United States Army and of the Acting Attorney-General of the United States wherein it was held that the provisions of the statutes passed by the Philippine Legislature creating a voting committee or board of control, and enumerating the duties and powers thereof with respect to certain corporations in which the Philippine Government is the owner of stock, are nullities. Announcement was made that on account of the invalidity of the portions of the Acts creating the voting committee or board of control, the Governor-General would, thereafter, exercise exclusively the duties and powers theretofore assumed by the voting committee or board of control. Notice of the contents of this executive order was given to the President of the Senate and the Speaker of the House of Representatives. (XXIV O. G. 2419.)

A special meeting of the stockholders of the National Coal Company was called for December 6, 1926, at three o'clock in the afternoon, for the purpose of electing directors and the transaction of such other business as might properly come before the meeting. Prior thereto, on November 29, 1926, the President of the Senate and the Speaker of the House of Representatives as members of the voting committee, requested the Governor-General to convene the committee at 2:30 p. m., on December 6, 1926, to decide upon the manner in which the stock held by the Government in the National Coal Company should be voted. The Governor-General acknowledged receipt of this communication but declined to participate in the proposed meeting. The President of the Senate and the Speaker of the House of Representatives did in fact meet at the time and place specified in their letter to the Governor-General. It was then and there resolved by them that at the special meeting of the stockholders, the votes represented by the stock of the Government in the National Coal Company, should be cast in favor of five specified persons for directors of the company.

On December 6, 1926, at three o'clock in the afternoon, the special meeting of the stockholders of the National Coal Company was held in accordance with the call. The Governor-General, through his representative, asserted the sole power to vote the stock of the Government. The President of the Senate and the Speaker of the House of Representatives attended the meeting and filed with the secretary of the company a certified copy of the minutes of the meeting of the committee held at the office of the company a half hour before. The Governor-General, through his representative, thereupon objected to the asserted powers of the President of the Senate and the Speaker of the House of Representatives, and the latter likewise objected to the assertion of the Governor-General.

The chair recognized the President of the Senate and the Speaker of the House of Representatives in their capacity as majority members of the voting committee as the persons lawfully entitled to represent and vote the government stock. To this the representative of the Governor-General made protest and demanded that it be entered of record in the minutes. The vote cast by the President of the Senate and the Speaker of the House

of Representatives was in favor of Alberto Barretto, Milton E. Springer, Dalmacio Costas, Anselmo Hilario, and Frank B. Ingersoll. The Governor-General, through his representative, alleging representation of the government stock, cast his vote in favor of Alberto Barretto, Romarico Agcaoili, Frank B. Ingersoll, H. L. Heath, and Salvador Laggameo. The chair declared the ballot cast by the President of the Senate and the Speaker of the House as electing the names therein indicated, directors of the National Coal Company

Immediately after the stockholders' meeting, the persons declared by the chairman to have been elected, met and undertook to organize the board of directors of the National Coal Company by the election of officers. All the directors for whom the President of the Senate and the Speaker of the House of Representatives voted and who were declared elected at the meeting of the stockholders participated in this meeting. Included among them, were the three defendants, Milton E. Springer, Dalmacio Costas, and Anselmo Hilario.

The applicable legal doctrines are found in the Organic Law, particularly in the Organic Act, the

Act of Congress of August 29, 1916, and in statutes enacted under authority of that Act, and in decisions interpretative of it.

The Government of the Philippine Islands is an agency of the Congress of the United States. The powers which the Congress, the principal, has seen fit to entrust to the Philippine Government, the agent, are distributed among three coordinate departments, the executive, the legislative, and the judicial. It is true that the Organic Act contains no general distributing clause. But the principle is clearly deducible from the grant of powers. It is expressly incorporated in our Administrative Code. It has time and again been approvingly enforced by this Court.

No department of the Government of the Philippine Islands may legally exercise any of the powers conferred by the Organic Law upon any of the others. Again it is true that the Organic Law contains no such explicit prohibition. But it is fairly implied by the division of the Government into three departments. The effect is the same whether the prohibition is expressed or not. It has repeatedly been announced by this Court that each

of the branches of the Government is in the main independent of the others. The doctrine is too firmly imbedded in Philippine institutions to be debatable. (Administrative Code, sec. 17; Barcelon v. Baker (1905) 5 Phil. 87; U. S. v. Bull (1910) 15 Phil. 7; Severino v. Governor-General (1910) 16 Phil. 366; Forbes v. Chuoco Tiaco (1910) 16 Phil. 534; Province of Tarlac v. Galo (1913) 26 Phil. 338; Concepcion v. Paredes (1921) 42 Phil. 599; U. S. v. Ang Tang Ho (1922) 43 Phil. 1; Abueva v. Wood (1924) 45 Phil. 612; Alejandrino v. Quezon (1924) 47 Phil. 83.)

It is beyond the power of any branch of the Government of the Philippine Islands to exercise its functions in any other way than that prescribed by the Organic Law or by local laws which conform to the Organic Law. The Governor-General must find his powers and duties in the fundamental law. An Act of the Philippine Legislature must comply with the grant from Congress. The jurisdiction of this Court and other courts is derived from the constitutional provisions.

These canons of political science have more than ordinary significance in the Philippines. To

the Government of the Philippine Islands has been delegated a large degree of autonomy, and the chief exponent of that autonomy in domestic affairs is the Philippine Legislature. The Governor-General on the other hand is the head of the Government and symbolizes American sovereignty. That under such a political system, lines of demarcation between the legislative and the executive departments are difficult to fix, and that attempted encroachments of one on the other may occur, should not dissuade the Supreme Court, as the guardian of the constitution, from enforcing fundamental principles.

The Organic Act vests "the supreme executive power" in the Governor-General of the Philippine Islands. In addition to specified functions, he is given "general supervision and control of all the departments and bureaus of the government of the Philippine Islands as far as is not inconsistent with the provisions of this Act." He is also made "responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands." The authority of the Governor-General is made secure by

the important proviso "that all executive functions of government must be directly under the Governor-General or within one of the executive departments under the supervision and control of the Governor-General." (Organic Act, secs. 21, 22.) By the Administrative Code, "the Governor-General, as Chief Executive of the Islands, is charged with the executive control of the Philippine Government, to be exercised in person or through the Secretaries of Departments, or other proper agency, according to law." (Sec. 58.)

The Organic Act grants general legislative power except as otherwise provided therein to the Philippine Legislature. (Organic Act, secs. 8, 12.) Even before the approval of the existing Organic Act, it was held that the Philippine Legislature has practically the same powers in the Philippine Islands within the sphere in which it may operate as the Congress of the United States. (Chanco v. Imperial (1916) 34 Phil. 329.) The rule judicially stated is now that an Act of the Philippine Legislature which has not been expressly disapproved by Congress is valid, unless the subject-matter has been covered by Congressional legislation, or its enactment forbidden by some provision of the Or-

ganic Law. The legislative power of the Philippine Government is granted in general terms subject to specific limitations. (Gaspar v. Molina (1905) 5 Phil. 197; U. S. vs. Bull *supra; In re* Guariña (1913) 24 Phil. 37; U. S. v. Limsiongco (1920) 41 Phil. 94; Concepcion v. Paredes *supra.*)

An independent judiciary completes the governmental system. The judicial power is conferred on the Supreme Court, courts of first instance, and inferior courts. (Organic Act, sec. 26.)

It is axiomatic that the Philippine Legislature was provided to make the law, the office of the Governor-General to execute the law, and the judiciary to construe the law What is a legislative, an executive, or a judicial act, as distinguished one from the other, is not always easy to ascertain. A precise classification is difficult. Negatively speaking, it has been well said that "the legislature has no authority to execute or construe the law, the executive has no authority to make or construe the law, and the judiciary has no power to make or execute the law." (U. S. v. Ang Tang Ho *supra.*)

It is legislative power which has been vested in the Philippine Legislature. What is legislative

power? Judge Cooley says he understands it "to be the authority, under the constitution, to make laws, and to alter and repeal them." Those matters which the constitution specifically confides to the executive "the legislature cannot directly or indirectly take from his control." (Cooley's Constitutional Limitations, 7th ed., pp. 126-131, 158-162.) President Wilson in his authoritative work, "The State," page 487, emphasizes by italics that legislatures "are *law making bodies* acting within the gifts of charters, and are by these charters in most cases very strictly circumscribed in their action." If this is true, the converse that legislative power is not executive or judicial or governmental power needs no demonstration. The Legislature cannot lawfully exercise powers which are in their nature essentially executive or judicial. The Legislature cannot make a law and then take part in its execution or construction. So the Philippine Legislature is not a partaker in either executive or judicial power, except as the Philippine Senate participates in the executive power through having the right to confirm or reject nominations made by the Governor-General, and except as the Legislature participates in the judicial power through being made the sole

judge of the elections, returns, and qualifications of its elective members and through having the right to try its members for disorderly behavior. The Philippine Legislature may nevertheless exercise such auxiliary powers as are necessary and appropriate to its independence and to make its express powers effective. (McGrain v. Daugherty (1927) U. S. Sup. Ct. Adv. Ops. 370.)

When one enters on a study of the abstract question, where does the power to appoint to public office reside?, one is nearly burried in a mass of conflicting authority. Yet we have been at pains to review all of the cases cited by counsel and others which have not been cited. Shaking ourselves loose from the encumbering details of the decisions, we discern through them a few elemental truths which distinguish certain cases from others and which point the way for us in the Philippines.

The first principle which is noticed is that the particular wording of the constitution involved, and its correct interpretation predetermines the result. Does the constitution deny the legislative body the right of exercising the appointing power? The legislature may not do so. (State v. Kennon (1857)

7 O. St. 547; Clark v. Stanley (1872) 66 N. C. 28.) Does the constitution confer upon the governor the power to appoint certain officers and upon the legislature the power to prescribe the manner of appointment? The authorities are in conflict as to whether the legislature may itself make the appointment. Does the constitution merely contain the usual clause distributing the powers of government and no clause regulating appointments? The weight of judicial opinion seems to be that the power of appointing to office is not exclusively an executive function and that the legislature may not only create offices but may also fill them itself, but with a vigorous opposition in most respectable quarters. (Contrast Pratt v. Breckinridge (1901) 112 Ky. 1, and State v. Washburn (1901) 167 Mo. 680, with People v. Freeman (1889) 80 Cal. 233, and Richardson v. Young (1909) 122 Tenn. 471.)

The second thought running through the decisions is that in the State governments, the selection of persons to perform the functions of government is primarily a prerogative of the people. The general power to appoint officers is not inherent in any branch of the government. The people may exercise their political rights directly or by delegation. Should

the people grant the exclusive right of appointment to the governor, he possesses that right; but if they should otherwise dispose of it, it must be performed as the sovereign has indicated. Inasmuch, however, as the legislative body is the repository of plenary power, except as otherwise restricted, and the chief executive of the State is not, legislative bodies usually possess wide latitude in the premises. But this situation does not obtain in the Philippines where the people are not sovereign, and where constitutional rights do not flow from them but are granted by delegation from Congress.

It may finally be inferred from the books that the appointment of public officials is generally looked upon as properly an executive function. The power of appointment can hardly be considered a legislative power. Appointments may be made by the Legislature or the courts, but when so made should be taken as an incident to the discharge of functions properly within their respective spheres. (State v. Brill (1907) 100 Minn. 499; Stockman v. Leddy (1912) 55 Colo. 24; Spartanburg County v. Miller (1924) 132 S. E. 673; Mechem on Public Officers, secs. 103-108; Mechem, the Power to Ap-

point to Office; Its Location and Limits, 1 Mich. Law Rev. (1903) 531.)

From the viewpoint of one outside looking in, it would seem that the State legislatures have all too often been permitted to emasculate the powers properly belonging to the executive department, and that the governor of the State has been placed with the responsibility of administering the government without the means of doing so. The operations of the executive department have been fundamentally varied by the legislative department. The Legislature has absorbed strength, the executive has lost it. This tendency has rather been tolerated than acquiesced in. The executive should be clothed with sufficient power to administer efficiently the affairs of state. He should have complete control of the instrumentalities through whom his responsibility is discharged. It is still true, as said by Hamilton, that "A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be in practice a bad government." The mistakes of State governments need not be repeated here.

The history of the power of appointment and the stand taken by the judiciary on the question in the State of Kentucky is of more than ordinary interest. Kentucky was permitted to become an independent State by Virginia. The clause in the Kentucky constitution separating and guarding the powers of government came from the pen of the author of the Declaration of Independence, Thomas Jefferson. He it was who, in a letter to Samuel Kercheval, dated July 16, 1816, said: "Nomination to office is an executive function. To give it to the legislature, as we do in Virginia, is a violation of the principle of the separation of powers. It swerves the members from correctness by temptation to intrigue for office for themselves, and to a corrupt barter for votes, and destroys responsibility by dividing it among a multitude." Possibly inspired to such action by the authorship of the portion of the State constitution which was under consideration, in the early days of the Supreme Court of Kentucky, Mr. Chief Justice Robertson in the case of Taylor v. Commonwealth (1830, 3 J. J. Marshall 401) announced that "Appointments to office are intrinsically executive," but that it might be performed by a judicial officer when the duties of the

office pertain strictly to the court. This opinion was shaken in the case of Sinking Fund Comissioners v. George (1898, 104 Ky. 260) only to be afterwards reaffirmed in Pratt v. Breckinridge (1901, 112 Ky. 1), and in Sibert v. Garrett (1922, 246 S. W. 455). In the decision in the latter case, one of the most recent on the subject, the Supreme Court of Kentucky after reviewing the authorities refused to be frightened by the bugaboo that numerically a greater number of courts take a contrary view. It said: "We are convinced that they by doing so are inviting destruction of the constitutional barriers separating the departments of government, and that our interpretation is much the sounder one and is essential to the future preservation of our constitutional form of government as originally intended by the forefathers who conceived it. * * * Such power (of appointment) on the part of the Legislature, if a full exercise of it should be persisted in, would enable it to gradually absorb to itself the patronage and control of the greater part of the functioning agencies of the state and county governments, and, thus endowed, it would be little short of a legislative oligarchy."

It is of importance, therefore, not to be confused by State decisions, and invariably to return to the exact provisions of the Philippine Organic Law. It is the intention of the authors of that Law which should be searched out and effectuated.

The right to appoint to office has been confided, with certain well defined exceptions, by the Government of the United States to the executive branch of the government which it has set up in the Philippines. Let the Organic Law speak upon this proposition.

The original government inaugurated in the Philippines after American occupation was military in nature, and exercised all the powers of government, including, of course, the right to select officers. The original civil authority with administrative functions established here was the Second Philippine Commission. President McKinley, in his instructions to the Commission of April 7, 1900, ever since considered as the initial step taken to introduce a constitutional government, provided that until further action should be taken by Congress or otherwise, "The Commission will also have power * * * to appoint to office such officers under the judicial, educational, and civil service systems, and in the

municipal and departmental governments, as shall be provided for." When the first Civil Governor was appointed on June 21, 1901, the President again took account of the power of appointment in the following language: "The power to appoint civil officers, heretofore vested in the Philippine Commission, or in the Military Governor, will be exercised by the Civil Governor with the advice and consent of the Commission." The Congress when it came to make legislative provision for the administration of the affairs of civil government in the Philippine Islands, in the Act of Congress of July 1, 1902, the Philippine Bill, "approved, ratified, and confirmed," the action of the President in creating the Philippine Commission in the manner and form set forth in the Instructions of the President and in creating the office of Civil Governor and authorizing said Civil Governor to exercise the powers of government to the extent and in the manner set forth in the executive order dated June 21, 1901. (Philippine Bill, sec. 1.) Congress in the same law provided that the Islands "shall continue to be governed as thereby and herein provided." (See Opinion of Attorney-General Araneta on the power of the Governor-General to apoint and remove civil officers, 3 Op. Atty.-Gen. 563.)

Thus stood the right to appoint to office for fourteen years.

The Organic Act of August 29, 1916, included what follows on the subject of appointments. The Governor-General "shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor-General, or such as he is authorized by this Act to appoint, or whom he may hereafter be authorized by law to appoint." (Organic Act, sec. 21.) The exception to the general grant is that the Philippine Legislature "shall provide for the appointment and removal of the heads of the executive departments by the Governor-General." (Organic Act, sec. 22.) Each House of the Philippine Legislature may also elect a presiding officer, a clerk, a sergeant at arms, and such other officers and assistants as may be required. (Organic Act, sec. 18.) The Philippine Legislature is authorized to choose two Resident Commissioners to the United States. (Organic Act, sec. 20.) The prohibition on the local Legislature, which has been thought of as referring to the Resident Commissioners, is that "No senator or representative shall during the time for which he may have been elected, be

eligible to any office the election to which is then vested in the legislature, nor shall he be appointed to any office of trust or profit which shall have been created or the emoluments of which shall have been increased during such term." (Organic Act, sec. 18.)

The Administrative Code provides the following: "In addition to his general supervisory authority, the Governor-General shall have such specific powers and duties as are expressly conferred or imposed on him by law and also, in particular, the powers and duties set forth," including the special powers and duties "(a) To nominate and appoint officials, conformably to law, to positions in the service of the Government of the Philippine Islands. (b) To remove officials from office conformably to law and to declare vacant the offices held by such removed officials. For disloyalty to the Government of the United States, the Governor-General may at any time remove a person from any position of trust or authority under the Government of the Philippine Islands." (Sec. 64, (*a*), (*b*). The Administrative Code lists the officers appointable by the Governor-General. (Sec. 66.)

It will be noticed that the Governor-General, in addition to being empowered to appoint the officers authorized by the Organic Act and officers whom thereafter he might be authorized to appoint, was to continue to possess the power to appoint such officers as could be appointed by him when the Organic Act was approved. The careful phraseology of the law and the connection provided by the word "now" with prior Organic laws is noteworthy. It would not be at all illogical to apply the same rule to the Governor-General in his relations with the Legislature which the judiciary uniformly applies to the Courts in their relations with the Legislature, which is, that the Legislature may add to, but may not diminish, the jurisdiction of the courts—The Legislature may add to, but may not diminish, the power of the Governor-General. (Organic Act, sec. 26; Barrameda v. Moir (1913) 25 Phil. 44; *In re* Guariña *supra;* U. S. v. Limsiongco *supra.*)

It will also not escape attention that the only reference made to appointments by the Legislature relates to the selection of Secretaries of Departments, of officers and employees for the Legislature, and of Resident Commissioners, from which it would

naturally be inferred that no other officers and employees may be chosen by it. The exceptions made in favor of the Legislature strengthen rather than weaken the grant to the executive. The specific mention of the authority of the Legislature to name certain officers is indicative of a purpose to limit the legislative authority in the matter of selecting officers. The expression of one thing in a constitution is necessarily the exclusion of things not expressed. Had it been intended to give to the Philippine Legislature the power to name individuals to fill the offices which it has created, the grant would have been included among the legislative powers and not among the executive powers. The administrative control of the Government of the Philippine Islands by the Governor-General to whom is confided the responsibility of executing the laws excludes the idea of legislative control of administration.

Possibly, the situation may better be visualized by approaching the question by a process of elimination. Is the power of appointment judicial? No one so contends. Is the power of appointment legislative? Not so if the intention of the Organic Law be carried out and if the Legislature be confined to its

law-making function. Is the power of appointment executive. It is.

The exact question of where the power of appointment to office is lodged has never heretofore arisen in this jurisdiction. But a decision of this Court and a controlling decision of the United States Supreme Court are in point.

In Concepcion v. Paredes, *supra*, this Court had before it a law which attempted to require a drawing of lots for judicial positions in derogation of executive power. The case was exhaustively argued and after prolonged consideration, the questioned portion of the law was held invalid as in violation of the provision of the Organic Act. Following the lead of Kentucky, it was announced that "*Appointment to office is intrinsically an executive act* involving the exercise of discretion."

In the case of Myers v. United States (1926, U. S. Sup. Ct. Adv. Ops. p. 27), the United States Supreme Court had presented the question whether, under the Constitution, the President has the exclusive power of removing executive officers of the United States whom he has appointed by and with the advice and consent of the Senate. The answer

was that he has. The decision is epochal. The Chief Justice quoted from Madison the following:

> "If there is a principle in our Constitution, indeed in any free Constitution more sacred than another, it is that which separates the legislative, executive and judicial powers. If there is any point in which the separation of the legislative and executive powers ought to be maintained with great caution, it is that which relates to officers and offices.
>
> "The powers relative to offices are partly legislative and partly executive. The legislature creates the office, defines the powers, limits its duration and annexes a compensation. This done, the legislative power ceases. They ought to have nothing to do with designating the man to fill the office. That I conceive to be of an executive nature. Although it be qualified in the Constitution, I would not extend or strain that qualification beyond the limits precisely fixed for it. We ought always to consider the Constitution with an eye to the principles upon which it was founded. In this point of view, we shall readily conclude that if the legislature determines the powers, the honors, and emoluments of an office, we should be insecure if they were to designate the officer also. The nature of things restrains and confines the legislative

and executive authorities in this respect; and hence it is that the Constitution stipulates for the independence of each branch of the Government." 1 Annals of Congress, 581, 582. Also see Madison in the Federalist, Nos. 47, 76.

The distinguished Chief Justice said:

"* * * * The Constitution was so framed as to vest in the Congress all legislative powers therein granted, to vest in the President the executive power, and to vest in one Supreme Court and such inferior courts as Congress might establish, the judicial power. From this division on principle, the reasonable construction of the Constitution must be that the branches should be kept separate in all cases in which they were not expressly blended, and the Constitution should be expounded to blend them no more than it affirmatively requires. Madison, 1 Annals of Congress, 497.

* * *

"The vesting of the executive power in the President was essentially a grant of the power to execute the laws. But the President alone and unaided could not execute the laws. He must execute them by the assistance of subordinates. This view has since been repeatedly affirmed by this court. * * * * As he is charged specifically to take

care that they be faithfully executed, the reasonable implication, even in the absence of express words, was that as part of his executive power he should select those who were to act for him under his direction in the execution of the laws. The further implication must be, in the absence of any express limitation respecting removals, that as his selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he can not continue to be responsible. Fisher Ames, 1 Annals of Congress, 474. *It was urged that the natural meaning of the term 'executive power' granted the President included the appointment and removal of executive subordinates. If such appointments and removals were not an exercise of the executive power, what were they? They certainly were not the exercise of legislative or judicial power in government as usually understood.*

"It is quite true that in state and colonial governments at the time of the Constitutional Convention, power to make appointments and removals had sometimes been lodged in the legislatures or in the courts, but such a disposition of it was really vesting part of the executive power in another branch of the government.

* * * *

"We come now to a period in the history of the Government when both Houses of Congress attempted to reverse this constitutional construction and to subject the power of removing executive officers appointed by the President and confirmed by the Senate to the control of the Senate, indeed finally to the assumed power in Congress to place the removal of such officers anywhere in the Government.

* * * *

"The extreme provisions of all this legislation were a full justification for the considerations so strongly advanced by Mr. Madison and his associates in the First Congress, for insisting that the power of removal of executive officers by the President alone was essential in the division of powers between the executive and the legislative bodies. It exhibited in a clear degree the paralysis to which a partisan Senate and Congress could subject the executive arm and destroy the principle of executive responsibility, and separation of the powers sought for by the framers of our Government, if the President had no power to removal save by consent of the Senate. It was an attempt to redistribute the powers and minimize those of the President.

* * * *

> "For the reasons given, we must therefore hold that the provision of the law of 1876 by which the unrestricted power of removal of first class postmasters is denied to the President is in violation of the Constitution and invalid."

Membership in the Committee created by Acts 2705 and 2822 is an office. No attempt will be made to accomplish the impossible, which is to formulate an exact judicial definition of the term "office." The point is that the positions in question constitute an "office," whether within the meaning of that word as used in the Code of Civil Procedure under the topic "Usurpation of Office," and in the jurisprudence of Ohio from which these portions of the Code were taken; whether within the local definitions of "office" found in the Administrative Code and the Penal Code; or whether within the constitutional definitions approved by the United States Supreme Court. (Code of Civil Procedure, secs. 197 *et seq.*, 519; Act 136, sec. 17; State v. Kennon *supra*, cited approvingly in Sheboygan v. Parker (1866) 3 Wall. 93; Administrative Code, sec. 2; Penal Code, arts. 264, 401.) Paraphrasing the United States Supreme Court in a late decision, there

is not lacking the essential elements of a public station, permanent in character, created by law, whose incidents and duties were prescribed by law. (Metcalf & Eddy v. Mitchell (1926) 269 U. S. 514; U. S. v. Maurice (1823) 2 Brook. 96; U. S. v. Hartwell (1868) 6 Wall. 385.) The Legislature did more than add incidental or occasional duties to existing executive offices for two of the members of the voting committee are representatives of the legislative branch. The Supreme Court of North Carolina has held that the Act of the General Assembly giving to the President of the Senate and the Speaker of the House of Representatives the power to appoint proxies and directors in all corporations in which the State has an interest, creates a public office and fills the same by appointment of the Legislature. (Clark v. Stanley (1872) 66 N. C. 28; Howerton v. Tate (1873) 68 N. C. 498; Shoemaker v. U. S. (1892) 147 U. S. 282; Advisory Opinion to Governor (1905) 49 Fla. 269; Mechem on Public Officers, Ch. I.)

To tell the truth, it is possible that the earnestness of counsel has just led us to decide too much. Not for a moment should there be dismissed from our minds the unusual and potently effective pro-

viso of section 22 of the Organic Act, "*That all executive functions of the government must be directly under the Governor-General or within one of the executive departments under the supervision and control of the Governor-General.*" At the very least, the performance of duties appurtenant to membership in the voting committee is an executive function of the Government, which the Organic Act requires must be subject to the unhampered control of the Governor-General. The administrative domination of a governmentally organized and controlled corporation is clearly not a duty germane to the law-making power.

The incorporation of the National Coal Company has not served to disconnect the company or the stock which the Government owns in it from the Government and executive control. The Philippine Legislature is empowered to create and control private corporations. (Martinez v. La Asociacion de Señoras Damas del Santo Asilo de Ponce (1909) 213 U. S. 20.) The National Coal Company is a private corporation. (National Coal Company v. Collector of Internal Revenue (1924) 46 Phil. 583.) By becoming a stockholder in the National Coal Company, the Government divested itself of its so-

vereign character so far as respects the transactions of the corporation. (Bank of the U. S. v. Planters' Bank of Georgia (1824) 9 Wheat. 904.) Unlike the Government, the corporation may be sued without its consent, and is subject to taxation. Yet the National Coal Company remains an agency or instrumentality of government. Mr. Chief Justice Marshall in speaking of the Bank of the United States said, "It was not created for its own sake, or for private purposes. It has never been supposed that Congress could create such a corporation." (Osborn v. Bank of the U. S. (1824) 9 Wheat. 738; National Bank v. Commonwealth (1869) 9 Wall. 353; Railroad Co. v. Peniston (1873) 18 Wall. 5; Chesapeake & Delaware Canal Co. v. U. S. (1918) 250 U. S. 123.) Of the National Coal Company, it has been said by Mr. Justice Johnson as the organ of the court in National Coal Company v. Collector of Internal Revenue, *supra*, that "The Government of the Philippine Islands is made the majority stokholder, evidently in order to insure proper governmental supervision and control, and thus to place the Government in a position to render all possible encouragement, assistance and help in the prosecution and furtherance of the company's business."

The analogy is closer in the companion National Bank case, No. 27225.

It further is incontrovertible that the Government, like any other stockholder, is justified in intervening in the transactions in the corporation, and in protecting its property rights in the corporation. Public funds were appropriated to create the National Coal Company. Those funds were used to purchase stock. The voting of the government stock is the prerogative of the stockholder, not the prerogative of the corporation. It is a transaction in, but not of, the corporation. The stock is property. The Government, the owner of the majority stock in the company, naturally dominates the management of its property. The Government may enforce its policies and secure relief in and through the corporation and as a stockholder.

The situation will be better understood if it be recalled that, in addition to the National Coal Company (Acts 2705 and 2822), the Philippine Legislature has created the Philippine National Bank (Acts 2612, 2747, 2938, and 3174), the National Petroleum Company (Act 2814), the National Development Company (Act 2849), the National Cement Company (Act 2855), and the National Iron

Company (Act 2862). The aggregate authorized capital stock of these companies is ₱54,500,000.00. The Legislature has in each of these instances directed that a majority of the shares of stock shall be purchased for the Government, and has appropriated money for this purpose. There have likewise been authorized corporations for the promotion of the merchant marine (Act 2754). The stock of the Manila Railroad Company has been purchased for the Government. (Act 2574, 2752, and 2923.) All these are conspicuous instances of a paternally inclined government investing large sums in business enterprises which after acquisition or organization have vitally concerned the Government. In all of the companies mentioned, the stock is to be voted by a committee or board of control, consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. The power of the majority stockholders to vote the government stock in the corporation carries with it the right, under our Corporation Law, to elect all the directors, to remove any or all of them, and to dissolve the corporation by voluntary proceedings. (Corporation Law, secs. 31, 34, 62.) In the case of the Philippine National Bank, the law explicitly

enumerates various functions of the bank which may not be performed without the express approval of the Board of Control. (Act 2938.)

Very important property rights are involved in the transactions in the governmentally directed corporations. Just as surely as the duty of caring for government property is neither judicial nor legislative in character is it as surely executive. Yet a majority of the voting committee or Board of Control is made up of the presiding officers of the two houses of the Legislature and they are in a position to dictate action to the directors and subordinate personnel of these corporations.

Based on all the foregoing considerations, we deduce that the power of appointment in the Philippines appertains, with minor exceptions, to the executive department; that membership in the voting committee in question is an office or executive function; that the National Coal Company and similar corporations are instrumentalities of the government; that the duty to look after government agencies and government property belongs to the executive department; and that the placing of members of the Philippine Legislature on the voting com-

mittee constitutes an invasion by the Legislative Department of the privileges of the Executive Department. Under a system of government of delegated powers, under which delegation legislative power vests in the Philippine Legislature and executive power vests in the Governor-General, and under which delegation a general power of appointment resides in the Governor-General and a specified power of appointment resides in the Philippine Legislature, the latter cannot directly or indirectly perform functions of an executive nature through the designation of its presiding officers as majority members of a body which has executive functions. That is the meaning we gather from the tri-partite theory of the division of powers. That is the purport of the provisions of the Organic Law. That has been the decided trend of persuasive judicial opinion.

The intimation contained in the conclusions just reached does not necessarily mean that the plaintiff will be privileged to substitute the directors designated by the Governor-General for those designated by the two presiding officers in the Legislature. The burden has heretofore been on the defendants. From this point, it will be on the plaintiff. It is well es-

tablished in *quo warranto* proceedings that the failure of the defendant to prove his title does not establish that of the plaintiff. (People v. Tacher (1874) 10 N. Y. 525.)

The answer to the problem comes from two directions. The Acting Attorney-General of the United States finds the solution in the supreme executive power entrusted to the Governor-General, while counsel for the plaintiff presses upon us the rule of statutory construction pertaining to partial invalidity. We are frank to say that we experience difficulty in following the lead of the law officer of the Government of the United States. The Governor-General since the approval of the last Organic Act has had no prerogative powers. His powers are so clearly and distinctly stated that there ought to be no doubt as to what they are. Like the Legislature and the judiciary, like the most inconspicuous employee, the Governor-General must find warrant for his every act in the law. At this stage of political development in the Philippines, no vague residium of power should be left to lurk in any of the provisions of the Organic Law.

Counsel for the plaintiff rely on a decision of this Court (U. S. v. Rodriguez (1918) 38 Phil. 759)

as best expressing the local rule regarding statutes void in part. Counsel for the defendants cite an earlier case (Barrameda v. Moir (1913) 25 Phil. 44). As the principle announced in the last cited case is the more comprehensive and is more fairer to the defendants, we give it preference. It was there announced:

> "Where part of a statute is void as repugnant to the Organic Law, while another part is valid, the valid portion, if separable from the invalid, may stand and be enforced. But in order to do this, the valid portion must be so far independent of the invalid portion that it is fair to presume that the Legislature would have enacted it by itself if they had supposed that they could not constitutionally enact the other. Enough must remain to make a complete, intelligible and valid statute, which carries out the legislative intent. The void provisions must be eliminated without causing results affecting the main purpose of the Act in a manner contrary to the intention of the Legislature. The language used in the invalid part of a statute can have no legal force or efficacy or any purpose whatever, and, what remains must express the legislative will independently of the void part, since the court has no power to legislate."

Omitting reference to the President of the Senate and the Speaker of the House of Representatives in section 4 of Act 2705, as amended by section 2 of Act 2822, it would then read: "The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General." Would the Court be justified in so enforcing the law without itself intruding on the legislative field?

The Philippine Legislature, as we have seen, is authorized to create corporations and offices. The Legislature has lawfully provided for a National Coal Company and a committee to vote the government stock in that company, but has unlawfully provided for two of its members to sit in the committee. Would this Court be doing violence to the legislative will if the voting power be continued solely in the hands of the Governor-General until different action is taken by the Legislature? We conclude that we would not, for the reason that the primordial purpose of the Legislature was "to promote the business of developing coal deposits * * * * and of mining * * * and selling the coal contained in said deposits." (Act 2705, sec. 2, Act 2822, sec. 1.) The incidental purpose of the Legislature was to provide

a method to vote the stock owned by the Government in the National Company. In the words of the United States Supreme Court, "The striking out is not necessarily by erasing words, but it may be by disregarding the unconstitutional provision and reading the statute as if that provision was not there." (Railroad Companies v. Schutte (1880) 103 U. S. 118; State v. Westerfield (1897) 23 Nev. 468; State v. Washburn *supra;* State v. Wright (1913) 251 Mo. 325; State v. Clausen (1919) 107 Wash. 667; 1 Lewis Sutherland, Statutory Construction, Second Ed. Ch. IX.)

The decision of the United States Supreme Court in Clayton v. People (1890, 132 U. S. 632) is particularly applicable on account of relating to the validity of an Act passed by a territorial legislature, the question of partial invalidity, and the contention likewise here made, that since the law in question had been on the statute books for a number of years, it must be considered as having been impliedly ratified by the Congress. An Act of the Legislature of Utah of 1878 had declared that the auditor and the treasurer shall be elected by the voters of the territory. In a decision handed down in 1886, the Supreme Court of the Territory of Utah

held the Act void because in conflict with the organic act creating the territory, which provided that the governor, with the consent of the legislative council, shall appoint such officers. It further held that a territorial statute invalid when enacted is not validated by the failure of the Congress expressly to disapprove it. (People v. Clayton, 4 Utah 421.) The United States Supreme Court on appeal affirmed the judgment. It said:

> "It can hardly be admitted as a general proposition that under the power of Congress reserved in the Organic Acts of the Territories to annul the Acts of their Legislatures the absence of any action by Congress is to be construed to be a recognition of the power of the Legislature to pass laws in conflict with the Act of Congress under which they were created. * * * * We do not think that the acquiescence of the people, or of the Legislature of Utah, or of any of its officers, in the mode of appointing the auditor of public accounts, is sufficient to do away with the clear requirements of the Organic Act on that subject. It is also, we think, very clear that only that part of the Statute of Utah which is contrary to the Organic Act, namely, that relating to the mode of appointment of the officer, is invalid; that so much of it as creates the office of the auditor of public accounts and

> treasurer of the Territory is valid; and that it can successfully and appropriately be carried into effect by an appointment made by the governor and the Council of the Territory, as required in the Act of Congress."

On the assumption, however, that the entire provision authorizing the voting committee be considered as wiped out, yet we think it would still devolve on the Governor-General to protect the public interests and public property. He is made responsible for the execution of the laws, and he would be unfaithful to that trust if, through inaction, instrumentalities of government should fail to function and government property should be permitted to be dissipated.

Counsel for the defendants have injected the argument into the discussion that, as the President of the Senate and the Speaker of the House of Representatives are at least *de facto* officers, their right to act as members of the voting committee cannot be collaterally attacked, and that the defendants in this suit are the *de jure* members of the board of directors of the National Coal Company. Contentions such as these are out of harmony with the avowed purpose to avoid technical obstruction, and to secure a definite expression of opinion on the main issue. However, it remains to be said that this is a direct proceeding to test the right of the defendants to the

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE
PHILIPPINE ISLANDS
IN BANC

Justices Present:

Avanceña, C. J.
Johnson, Street,
Malcolm, Villamor,
Ostrand, Johns,
Romualdez, and
Villa-Real, JJ.

GOVERNMENT OF THE PHILIPPINE ISLANDS, *Plaintiff and Petitioner,* *vs.* MILTON E. SPRINGER, DALMACIO COSTAS and ANSELMO HILARIO, *Defendants and Respondents.*	R. G. No. 26979 Submited 11th day of Jan., 1927. Promulgated 1st day of Apr., 1927.

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DECISION

JOHNSON, J., concurring:

Under the admitted facts the writ of quo warranto prayed for should be granted. Milton E.

Springer, Dalmacio Costas and Anselmo Hilario are unlawfully and illegally holding and exercising the position of members of the Board of Directors of the National Coal Company and should be ousted and altogether excluded therefrom; that Romarico Agcaoili, H. L. Heath and Salvador Lagdameo have been duly and legally elected as members of the Board of Directors of the National Coal Company, and judgment is rendered that they be inducted into said position to take charge thereof and to perform the duties incumbent upon them as members of said Board of Directors.

The principal questions involved in this action are:

(a) May the Legislative Department of the Government of the Philippine Islands adopt a law and provide that some of its members shall take part in its execution?

(b) Was the Governor-General of the Philippine Islands authorized, under the law, to promulgate General Order No. 37? and

(c) Were the respondents legally elected as members of the Board of Directors of the National Coal Company?

Inasmuch as these questions involve respective powers of two great departments of the Government, they should be seriously considered by this Court and not to be lightly resolved on.

These questions were presented to the Supreme Court of the Philippine Islands for solution in an original action, praying for the issuance of the extraordinary legal writ of quo warranto. In relation with the questions involved, the specific and definite purpose of the action is (a) to inquire into the right of the respondents, Milton E. Springer, Dalmacio Costas and Anselmo Hilario to act as members of the Board of Directors of the National Coal Company, a private corporation created by special charter by an Act of the Philippine Legislature, and (b) to have inducted into office, in their place and stead, said Romarico Agcaoili, H. L. Heath and Salvador Lagdameo.

To the petition presented by the Government of the Philippine Islands (ex rel. Romarico Agcaoili, H. L. Heath and Salvador Lagdameo) the respondents demurred. The facts are therefore admitted. A question of law only is presented for solution.

THE FACTS UPON WHICH THE ACTION IS BASED

The facts upon which the petition is based are few, clear, and well defined. There is no dispute upon the facts. They are briefly: That the National Coal Company is a private corporation created by Act 2705 (Vol. 12, Public Laws, p. 216, March 10, 1917) as amended by Act 2822 (Vol. 14, Public Laws, p. 202, March 5, 1919). Act 2705, as amended by Act 2822, constitutes the charter of said Company. Said Acts are not public laws. They are private Acts of the Philippine Legislature. They provide that said Company shall be subject to the provisions of the Corporation Law (Act 1459) in so far as they are not inconsistent with the provisions of said charter, and shall have the general powers mentioned in said Act (Act 1459) and such other powers as may be necessary to enable it to prosecute the business of developing coal deposits in the Philippine Islands, and mining, extracting, transporting and selling the coal contained in said deposits. Said charter provided that the capital of said Company shall be ₱3,000,000.00, divided into 30,000 shares of stock with a par value of ₱100.00 per share.

Said charter further provided that the Governor-General, on behalf of the Government of the Philippine Islands, shall subscribe for fifty-one per centum (51%) of said capital stock, and that the "voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the *Governor-General, the President of the Senate and the Speaker of the House of Representatives.*" At the time of the adoption of said charter the Philippine Legislature appropriated the sum of ₱1,530,000.00 for investment in the stock of said Company to be acquired by the Government of the Philippine Islands.

The National Coal Company was organized in accordance with the provisions of its charter. A Board of Directors was elected from time to time. Its business was carried on by said Board of Directors. Finally a legal question arose concerning the right of the President of the Senate and the Speaker of the House of Representatives to act with the Governor-General in voting the stock of said Company. That question was referred to the Judge Advocate General of the United States Army as well as to the Attorney-General of the United States. Upon full consideration of the question, the Judge

Advocate General and the Attorney-General reached the conclusion that the President of the Senate and the Speaker of the House of Representatives were without authority in law to take part in the voting of the stock owned by the Government, for the reason that the particular provision of the charter granting or creating said power was illegal and void, and that the participation of the President of the Senate and the Speaker of the House of Representatives in voting said stock was an illegal encroachment upon the powers of the Executive Department of the Government. Upon receiving said opinions the Governor-General, evidently for the purpose of avoiding criticism that he was permitting an illegal and void law to be enforced and, if possible, impeachment proceedings for a failure or refusal on his part to comply with the law of the land, issued an executive order, known as Executive Order No. 37. Executive Order No. 37 provides:

"Whereas it is held in an opinion of the Judge Advocate General of the United States Army, confirmed by an opinion of the Attorney-General of the United States, received at the Office of the Executive, November seventh, nineteen hundred and twenty-six, that the provisions of the statutes passed

by the Philippine Legislature creating a 'Board of Control' or 'Committee' and enumerating the duties and powers thereof, with respect to certain corporations in which the Insular Government is the owner of stock, are nullities; that the remaining portions of said statutes are valid; that the duties imposed by said statutes upon said Board or Committee are executive in their nature, and subject to the provisions of the Organic Act relating to the executive functions; that said executive duties and powers may be performed as in other cases not specifically provided for by law.

"Now, therefore, acting under authority of said opinions, the duties and powers heretofore exercised by said 'Board of Control' or 'Committee' shall, from and after this date, be exercised solely by the Governor-General pursuant to the executive power vested in him by the Organic Act.

Notice of said Executive Order was duly and timely given by the Governor-General to the President of the Senate and the Speaker of the House of Representatives. The Governor-General further notified the President and the Speaker that "he would thereafter exercise exclusively the duties and

powers" with respect to the voting of the stock held by the Government of the Philippine Islands in the National Coal Company.

At the time of the issuance of said Executive Order No. 37 or thereabouts the Government of the Philippine Islands was the registered owner of about 29,975 shares out of the total of 30,000 shares of said Company. The President of the Senate and the Speaker of the House of Representatives protested against the alleged assumed authority on the part of the Governor-General to vote said government stock and insisted upon their right to participate in the voting of the same.

Later, and without going into great detail, a meeting of the stockholders was called for the purpose of electing members of the Board of Directors of said Company. In accordance with the pre-announced intention, the President of the Senate and the Speaker of the House of Representatives attended the meeting of the stockholders of the Company and then and there asserted their right, as a majority of the "Voting Committee", to vote the stock of the Government. Against the objection and protest of the Governor-General they were per-

mitted by the Chairman of the meeting to vote all of the stock held by the Government of the Philippine Islands. They deposited a ballot purporting to be signed by them on behalf of the said "Voting Commitee" for the election as Directors of Alberto Barretto, Frank B. Ingersoll, Milton E. Springer, Dalmacio Costas and Anselmo Hilario. Notwithstanding the objection and protest of the Governor-General to the acceptance of said ballot, the Chairman permitted it to be deposited in favor of the persons for whom it was cast. At the same meeting of the stockholders and at the same time the Governor-General, insisting upon his sole right to vote the stock owned by the Government of the Philippine Islands, cast his ballot representing all of the stock of the Government, in favor of Alberto Barretto, Frank B. Ingersoll, Romarico Agcaoili, H. L. Heath and Salvador Lagdameo, which ballot was rejected by the Chairman and the same was not allowed to be deposited.

Against the ruling of the Chairman, permitting the ballot of the President of the Senate and the Speaker of the House of Representatives to be deposited on behalf of the said "Voting Committee"

a protest of the Governor-General was duly and timely presented. Notwithstanding said protest on the part of the Governor-General, that the President of the Senate and the Speaker of the House of Representatives had no authority to vote the stock of the Government nor to participate in the voting of the same, the Chairman declared that Alberto Barrette, Frank B. Ingersoll, Milton E. Springer, Dalmacio Costas and Anselmo Hilario had each received a majority of the votes cast and that said persons had been duly elected as members of the Board of Directors of the National Coal Company.

It will be noted that both the Governor-General, and the President of the Senate and Speaker of the House of Representatives voted for the election of Alberto Barretto and Frank B. Ingersoll. There is no objection in this record to the right of said persons to act as members of the Board of Directors. The contention of the Government is, that Romarico Agcaoili, H. L. Heath and Salvador Lagdameo had been duly and legally elected as members of the Board of Directors by the vote of the Governor-General, and that Milton E. Springer, Dalmacio Costas and Anselmo Hilario had not been duly and

legally elected as members of the Board of Directors by the vote of the President of the Senate and the Speaker of the House of Representatives, and that they should be ousted and altogether excluded from their office.

Considering the foregoing facts we have the question squarely presented, whether the persons elected by the Governor-General in voting the stock owned by the Government had been duly and legally elected Directors of said Company, or whether the persons elected by the President of the Senate and the Speaker of the House of Representatives were legally elected as such Directors.

It can scarcely be contended that the President of the Senate and the Speaker of the House of Representatives, when the Governor-General is present at a meeting of the stockholders of said Company, have a right to vote *all* of the stock of said Company, to the entire exclusion of the Governor-General. There is nothing in the law which indicates the manner in which the stock owned by the Government of the Philippine Islands may be voted when a difference of opinion exists among the members of the "Voting Committtee" as to how the same shall be voted.

Without discussing the method of voting the stock when there is a difference of opinion in the "Voting Committee' as to how it shall be voted we pass to the question, whether or not the President of the Senate and the Speaker of the House of Representatives, as members of the Legislative Department of the Government, have any right whatever to participate in the voting of the stock belonging to the Government of the Philippine Islands.

THE RIGHT OF THE LEGISLATIVE DEPARTMENT OF THE GOVERNMENT TO EXECUTE OR TO ASSIST IN THE EXECUTION OF ITS LAWS

The Legislative Department of the Government adopted the law creating the charter of the National Coal Company. The Legislative Department of the Government provided a method, in said charter, by which it, through the President of the Senate and the Speaker of the House of Representatives, should assist in the execution of said law.

It has been stated so frequently by eminent statesmen and jurists, that it scarcely needs the citation of authorities to support the doctrine, that

wherever the American flag flies as an emblem of Government, the powers of that Government are divided into three distinct and separate departments —Executive, Legislative and Judicial—each acting in its own field, under its own authority and general powers of the government. While the line of demarcation, by division, is easily discerned, it is at times difficult to follow in actual cases. There is a constant overlapping of the different departments of the government which cannot be avoided, and yet such overlapping generally results in the greater stability and permanency of the government. It is also a statement, based upon political science, that scarcely needs repetition, that one department overreaches its powers whenever it steps across the line of demarcation and attempt to function within the field of another department of government under the American flag. Under the form of government established in the Philippine Islands, one department of the government has no power or authority to inquire into the acts of another, which acts are performed within the discretion of the other department. It is the general duty of the legislative branch of the government to make such laws and regulations as will effectually conserve the peace

and good order and protect the lives and the property of the citizens of the state. It is the duty of the Governor-General to take such steps as he deems wise and necessary for the purpose of enforcing such laws. Every delay and hindrance and obstacle which prevents a strict enforcement of laws necessarily tends to jeopardize public interest and the safety of the whole people.

Barcelon vs. Baker, 5 P. R. 87.

The different departments of the government are co-ordinate, coequal and each functions independently, uncontrolled and uncontrollable by the other. To that statement, however, there exist exceptions. For example, the executive department of the government may annul and set aside acts of the legislative department of the government under its power of veto. So may the legislative department of the government annul and set aside actions of the executive department of the government by repealing or amending laws. So likewise the judicial department of the government may annul and set aside acts of the legislative department of the government when such acts are contrary to the fundamental laws of the state or beyond the powers

of the legislative department. But in every case, where one department, as above indicated, to any extent attempts to control the effects of acts of the other department or departments, it is acting under its own powers and within its own department.

The Constitution of the United States as well as the Constitution of each of the states of the Union provide that the government shall be divided into three departments: executive, legislative and judicial. George Washington, who was the President of the Constitutional Convention which adopted the United States Constitution, in a letter written to his friend Lafayette in 1788, referring to the complete separation of the powers of the government, said: "These powers are so distributed among the legislative, executive and judicial branches, in which the powers of the government are arranged that it can never be in danger of degenerating into a monarchy, an oligarchy, an aristocracy, or any other despotic form of government as long as there shall remain any virtue in the body of the people."

Mr. Thomas Jefferson, who has been quoted on questions relating to the meaning, force and application of the provisions of the Constitution of the

United States perhaps more than any other one person, said: "The great principle established by the Constitution of the United States which was never before fully established, was the separation of the delegated powers into the hands of the executive, the legislative department and the judiciary. This is our system of check and balances which makes ours a 'government of laws and not of men'." On another occasion Mr. Thomas Jefferson said, in discussing the necessity of limiting the power of government: "When it comes to a question of power —trust no man, bind him down from mischief, by the strong chains of the Constitution."

By the well known distribution of the powers of government among the executive, legislative and judicial departments by the constitution, there was provided that marvelous scheme of check and balances which has been the wonder and admiration of the statesmen, diplomats and jurists in every part of the civilized world.

The balance of the powers of Government provided for in the constitution as well as in the charter of the Philippine Government was not the result of chance. The various parts did not fall into

place merely through the vicissitudes of circumstance. They were devised by careful foresight; each in a measure dependent upon the others and not possessed of so much independence as to give freedom and courage in the exercise of their functions. Each was to move within its respective spheres as the bodies of the celestial system march along the pathways of the heaven. It is a fundamental rule of constitutional law that no department of government has power to perform nor to assist in performing the functions of another.

The executive department is limited to the execution of *valid* laws adopted by the legislative department of the government. The legislative department is limited to the enactment of laws and to the investigation of facts necessary for wise legislation. The judicial department of the government is limited to the administration of justice and the interpretation of laws. In case of differences between the executive and legislative departments as to their respective powers, it has long since been conceded that the Supreme Court shall act as an umpire.

Marbury vs. Madison (1803)	1 Cranch (U.S.)	137
Rice vs. Austin	19 Minn.	103
Luther vs. Borden	7 Howard (U. S.)	44
Martin vs. Hott	12 Wheat. (U.S.)	29

No government, past or present, has more carefully and watchfully guarded and protected by law the individual rights of life and property of its citizens than the governments under the American flag. Each of the three departments of the government has had separate and distinct functions to perform in this great labor. The history of the United States, covering nearly a century and a half, discloses the fact that each department has performed its part well. No one department of the government can or ever has claimed, within its discretionary power, a greater zeal than the other in its desire to promote the welfare of the individual citizens, entities or corporations. They are all joined together in their respective spheres, harmoniously working to maintain good government, peace and order, to the end that the rights of each citizen be equally protected. No one department can claim that it has a monopoly of these benign

purposes of the government. Each department has an exclusive field within which it can perform its part within certain legal and discretionary limits. No other department can claim a right to enter these legal and descretionary limits and assume to act there. No presumption of an abuse of these legal and discretionary powers by one department will be considered or entertained by another. Generally such conduct on the part of one department, instead of tending to conserve the highest interest of the government and its citizens and the rights of the people, would directly tend to destroy the confience of the people in the government and to undermine the very foundations of the government itself.

Barcelon vs. Baker, 5 P. R. 87, 115
Forbes et al. vs. Crossfield, 16 P. R. 534

The Government of the Philippine Islands, like the Government of the United States, is based upon the fundamental principle of the separation of the executive, legislative and judicial powers. Subject only to the exceptions especially established by the organic act, neither of the great departments of the government may validly exercise any

of the powers conferred upon either of the others. In the case of Abueva vs. Wood (45 P. R. 612) it was said: "The duties of each department are well defined and limited to certain fields of governmental operation." Each department exercises functions as independent of each other as the Federal or state governments of the Union. It was not intended by the framers of the theory of our government that the duties which had been assigned to the executive should be performed by the legislative, nor that the duties which had been assigned to each of them should be performed and directed by the judicial department.

Sinking Fund Cases,	99 U. S. 700, 718
Clough vs. Curtis,	134 U. S. 361
Abueva vs. Wood,	45 P. R. 612

No well organized government or business even can be well managed if one department can enter upon the field of another and attempt to administer or interfere in the administration of the other.

Abueva vs. Wood, supra	
Barcelon vs. Baker,	5 P. R. 87
U. S. vs. Bull,	15 P. R. 7, 27

In the case of Kilbourn vs. Thompson, 103 U. S. 164), it was said: "It is also essential to the successful working of this system, that the persons entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall, by the law of its creation, be limited to the exercise of the powers appropriate to its own department and no other."

Section 17 of the Administrative Code of 1917 (Act 2711) provides; "The executive, legislative, and judicial powers of the Philippine Government are distributed, respectively, among the executive, legislative, and judicial branches, severally exercising the functions and powers conferred on them by law."

Each department of the government has an exclusive field within which it can perform its part within certain discretionary limits. No other department can claim a right to enter these discretionary limits and assume to act there.

Barcelon vs. Baker, supra
U. S. vs. Bull, supra

Forbes vs. Tiaco,	16 P. R. 534
Borromeo vs. Mariano,	41 P. R. 322
Severino vs. G. G.,	16 P. R. 366
Tarlac vs. Gale,	26 P. R. 338

In the case of United States v. Ang Tang Ho (43 P. R. 1) this Court said that the legislature has no authority to execute or construe the law, the executive has no authority to make or construe the law. Subject to the constitution only, the power of each branch is supreme within its own jurisdiction, and it is for the judiciary only to say when an act of the legislature is or is not constitutional. It is beyond the power of any branch of the Government of the Philippine Islands to exercise its functions in any other way than that prescribed by the Organic Law or by local laws which conform to the Organic Law.

Alejandrino vs. Quezon, 46 P. R. 83, 96.

It is not within the power of the Philippine Legislature to enact laws which either expressly or impliedly diminish the authority conferred by an Act of Congress on the Chief Executive.

Concepcion vs. Paredes, 42 P. R. 599

From all of the foregoing, the conclusion is inevitable, that if any given act of the Philippine Legislature does not, by its nature, pertain to the law-making function, but is either executive or judicial in character, and does not fall within any of the express exceptions established by the Organic Act, such an act is *ultra vires* and therefore null and void. (See, for a discussion of the powers of the executive department of the Government, the opinion by the late Chief Justice Cayetano S. Arellano in the case of In re Patterson, 1 P. R. 93.)

POWERS OF THE LEGISLATIVE DEPARTMENT OF GOVERNMENTS UNDER THE AMERICAN FLAG

Some one has said that the powers of the legislative department of the Government, like the boundaries of the ocean, are unlimited. In constitutional governments, however, as well as governments acting under delegated authority, the powers of each of the departments of the same are limited and confined within the four walls of the constitution or the charter, and each department can only exercise such powers as are expressly given and such other powers as are necessarily implied from the given powers. The constitution is the shore of legislative authority against which the waves of legislative enactment may dash, but over which they cannot leap.

Mr. Justice Cooley, one of the greatest expounders of constitutional law, said: "The legislative power, we understand, to be the authority, under the constitution, to make laws and to alter and repeal them."

Mr. Biddel, an eminent lawyer, said: "The legislature has no other duty nor power than to make laws. After a law has been enacted, that department has no further power over the subject except to amend or repeal it. It can neither adjudge the law nor execute it. All power of that department is ended."

Mr. James Wilson, who was a member of the convention which adopted the Constitution of the United States, and later one of the first members of the Supreme Court of the United States, and one of the very ablest of the members of that great body, in discussing the question of the powers of the legislative department of the government, said, quoting from an able English statesman: "England can never be ruined but by a Parliament (legislative department), which demonstrates the danger of allowing to the legislative department any other (power) than strictly legislative powers."

Even the Justices of the Supreme Court joined in a letter addressed to President Washington upon the general subject of the separation of the departments of government, and insisted upon a scrupulous and undeviated maintenance of the separation of the departments.

Mr. Thomas Jefferson, James Madison and Alexander Hamilton, who were among the great expounders of the Constitution, wrote earnestly upon the question of the separation of the departments of government, and, with many others, united in protesting against tolerating the claim of the legislative department to exercise any other than purely legislative power.

It has been said in many of the leading cases decided by the highest courts of record that "the power of the legislature is the power to legislate *only* and to make such investigations as are necessary for that purpose."

Under a constitutional form of government it is believed that all will agree that the concentration of power in the legislative department of government or in any *one* of the other departments will inevitably result in despotism.

Mr. Bryce, who for many years was a close student of the system of government under the American flag, said: "A legislature is a legislature and nothing more." Mr. Woodrow Wilson, in discussing the powers of the executive and legislative departments of government, said: "The power of the legislative department is to *enact* laws, while it is the duty of the President to see that the laws of Congress are faithfully executed."

A careful reading of the debates, in the Constitutional Convention, by the greatest statesmen and diplomats at that time shows clearly that one of their greatest concerns was the limitation upon the powers of the executive and legislative departments. A reading of the Constitution itself adopted after a long discussion shows clearly that its members intended to expressly limit the powers of said departments. In the enumeration of the powers of the three departments the phrase that each "shall" or "shall not" do a particular thing is frequently found. No general unlimited power is found. Experience had shown that there was need of curbing the legislative body in order to prevent a violation of the citizens' right of liberty and prop-

erty. The members of the Constitutional Convention made an effort to strike at the very root of the evils which the people of the state had suffered by the madness of a sovereign legislative body.

James Madison, a member of the Convention and later President of the United States, said: "Experience had proved a tendency in our governments (state governments) to throw all power into the legislative vortex. The Executives of the States are, in general, little more than ciphers; the legislature, omnipotent. If no effectual check be devised in restraining the instability and encroachments of the latter, a revolution of some kind or other would be inevitable."

Gouvernour Morris, one of the great statesmen of his time, said that "he concurred in thinking the public liberty in greater danger from legislative usurpation than from any other source." (July 21, 1787.)

James Madison, in September, 1787, in speaking of the encroachments of the legislative department, said: "The experience of the states had demonstrated that their checks are insufficient. *The legislative department is everywhere extending the*

spheres of its activity and draining all power into its impetuous vortex. I have appealed to experience for the truth of what I advance on this subject."

Mr. James Wilson, a member of the Constitutional Convention and one of the first members of the Supreme Court of the United States, said on the 16th day of June, 1787: "If the legislative authority be not restrained there can be neither liberty nor stability."

The great statesmen who were among the members of the Constitutional Convention were as solicitous about the limitations of the executive department of the government, as they were concerning the limitations of the legislative department. They were exceedingly cautious in defining the powers of each of said departments, and so far as their knowledge and experience aided them their work was complete.

POWERS OF THE PHILIPPINE LEGISLATURE, GRANTED BY THE PHILIPPINE CHARTER

Turning to the Act of Congress of August 29, 1916, commonly known as the "Jones Law," for the

purpose of ascertaining what power or authority to legislate was granted to the Philippine Legislature, we find that, while the Legislature was given "general legislative power" (sections 7, 8, 12), "all laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which reserves the power and authority to annul the same." Not only must all laws enacted by the Philippine Legislature be reported to Congress for approval, but certain laws, in addition to the requirement that they must be submitted to Congress, must be submitted to the President of the United States for approval (sections 9, 10 and 19). In other words, no act of the Philippine Legislature can have the force and effect of a law until it has been either expressly or tacitly approved either by the Congress of the United States or by the President. Neither will it be contended that the express or tacit approval by the Congress of the United States or by the President, of a law otherwise illegal and void, will render such law valid if, in fact, is was adopted without power or authority.

THE AUTHORITY OF THE PHILIPPINE LEGISLATURE TO ENACT LAWS IS WHOLLY A DELEGATED AUTHORITY

The only legislative authority possessed by the Philippine Legislature is a delegated authority. The only power or authority to legislate is granted by the Congress of the United States by the charter (Jones Law; Act of July 2, 1902). To ascertain the power of the Philippine Legislature, therefore, an examination of its charter must be made.

It is argued that when either the President or the Congress of the United States gives express or tacit approval to an Act of the Philippine Legislature, that such an Act thereby becomes a valid subsisting law. That argument is tenable, except when such act is beyond the powers granted to the Legislature. The approval by the President or Congress of an act of the Philippine Legislature does not render such an act legal if, in fact, the same is beyond the powers of the Legislature or contrary to the fundamental law of the land. If the provisions of the act extend beyond the powers of the Legislature, then certainly it cannot be contended that the same is a valid and legal act even though the same has been expressly or tacitly ap-

proved by the President or Congress, unless the same can be considered ar act of the Congress of the United States and then only, when the same is within the power and authority of Congress. Such act of the Philippine Legislature, even with such approval, can be no more valid and legal than if the Congress of the United States itself had adopted a law which was beyond its power. The legality of such act, notwithstanding the approval, may be decided in a proper proceeding for the purpose of determining whether its provisions are beyond the powers of the legislative department of the government.

The general legislative powers granted to the Philippine Legislature are found in sections 6, 7, 8 and 12 of the Act of August 29, 1916, and those provisions of the Act of July 2, 1902, which have not been repealed. Section 6 provides that the laws now in force in the Philippines shall continue in force, except as altered, amended or modified herein, until altered, amended or repealed by the legislative authority herein provided by the Act of Congress.

Section 7 provides that the legislative authority herein provided shall have power, when not inconsistent with this Act, by due enactment, to amend, alter, modify or repeal any law, civil or criminal, continued in force by this act, as it may from time to time see fit.

Section 8 provides that general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this act. Section 12, among other things, provides that general legislative power in the Philippines, except as herein otherwise provided, shall be vested in the Legislature, which shall consist of two houses, one the Senate and the other, the House of Reperesentatives, and the two houses shall be designated "the Philippine Legislature."

From a reading of said sections 6, 7, 8 and 12 we have some difficulty in determining why it was necessary to repeat practically the same idea concerning the legislative authority in said sections. The provisions of sections 6, 7 and 12 add nothing to the provisions of section 8 which granted general legislative power to the Philippine Legislature.

We have read said Act of Congress of August 29, 1919, in vain, to find the slightest reference to the power of the Philippine Legislature to participate in the slightest degree, by legislation or otherwise, in the execution of its laws even after they have been approved expressly or tacitly by the President or Congress, unless such power is found in that provision of the law, and then only in the Philippine Senate, which gives that branch of the Legislature the right to participate, with its advice and consent, in the appointment of certain officers of the Government. But even that provision can scarcely be construed to mean that the Senate can participate in the execution of the laws.

THE ONLY SOVEREIGN IN THE PHILIPPINE ISLANDS IS THE SOVEREIGNTY OF THE UNITED STATES

The people of the Philippine Islands exercise in all matters of government a delegated authority. The executive, the legislative and the judicial departments of the Government are merely exercising a delegated authority. These departments, unlike the departments of Government in the United States under the Constitution, have received no authority from the people of the Philippine Islands. In the

absence of Congressional authority, these departments have no authority or power. They are each creatures of the Congress of the United States. Like all agents, they must act within the authority given. The title of acts of the Philippine Legislature, by which it assumes to enact laws "by its own authority" is an assumption of authority not possessed in fact nor in law. It acts by authority of the Congress of the United States and in the enactment of laws that authority should be recognized.

RIGHT OF PHILIPPINE LEGISLATURE TO APPOINT COMMITTEES TO MAKE INVESTIGATIONS IN ORDER TO ENACT WISE LEGISLATION

In addition to the power to *enact* laws, the Philippine Legislature has the inherent power on its own account, or through committees appointed by it, to inquire into the general condition of the government, the administration of governmental affairs and the general welfare of the people, to obtain information to aid it in adopting wise legislation. When such investigation is terminated and laws are adopted, then the authority of the legislature is ended and the execution of such laws is turned over to the Executive Department of the Government.

THE POWER AND AUTHORITY OF THE EXECUTIVE UNDER THE CHARTER OF THE PHILIPPINE GOVERNMENT

From a further examination of the Act of Congress of August 29, 1916, in relation with the Act of Congress of July 2, 1902, we find a depository of power and authority created for the express purpose of executing the laws of the Philippines. Section 21 of said Act (August 29, 1916) provides "that the supreme executive power shall be vested in an executive officer whose official title shall be the Governor-General of the Philippine Islands." It occurs to us that when the Congress of the United States used the words "supreme executive power" that the phrase was used after a careful consideration of its meaning. It was not a haphazard use of the term. The use of that phrase was carefully considered by the Congress of the United States when the Jones Bill was under consideration. In addition to the enumerated powers conferred upon the "supreme executive power," we find that he is held responsible for the faithful execution of the laws of the Philippine Islands. The language of section 22 is "he shall be responsible for the faithful execution of the laws of the Philippine Islands."

There is nothing in any of the provisions of the Jones Law which authorizes or permits the "supreme executive power" to divide its responsibility for the faithful execution of the laws of the Philippine Islands with any other department, legislative or judicial, or with any of the bureaus of the Government. All executive functions of the Philippine Government are expressly under the direction and control of the Governor-General.

Outside of the provisions for the internal regulation and control of the affairs of the legislature, its rules and regulations in its relation with the confirmation of certain appointees by the Governor-General, there is not a syllable, a word, a phrase, a line, nor a paragraph in the Jones Law which permits the legislature to participate in the execution of its general or special laws.

It is a fundamental maxim of political science, recognized and carried into effect in the Federal Constitution and the constitutions of all of the states of the Union, that good government and the protection of rights require that the legislative, executive and the judicial powers should not be confided to the same person or body, but should be apportioned

to separate and mutually independent departments of the government. (Black's Constitutional Law, p. 83.)

The idea of an apportionment of the powers of government, and of their separation into three co-ordinate departments is not a modern invention of political science. It was suggested by Aristotle in his treatise on "Politics", and was not unfamiliar to the more advanced of the medieval jurists. But the importance of this division of powers, with the principle of classification, were never fully apprehended, in theory, until Montesquieu gave to the world his great work "Spirit of the Laws". Since then his analysis of the various powers of the state has formed part of the accepted political doctrine of the civilized world.

All American constitutions, state and Federal, provide for the separation of the three great powers of government, and their apportionment to distinct and independent departments of government.

The principle of the separation of the three departments of the government imposes upon each the limitation that it must not usurp the powers nor encroach upon the jurisdiction of either of the others.

The people of the United States ordained in their constitution that "*all* legislative powers herein granted shall be vested in a Congress of the United States." The people also declared that "the executive power shall be vested in a President" and that "the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish." It is made clear therefore that the power to legislate is given to the Congress and that the President and the courts are prohibited from making laws. The legislature cannot lawfully usurp any of the functions granted by the Constitution to the executive department. The true meaning of the constitutional division of governmental powers is simply that the whole power of one of the three departments of government shall not be exercised by the same hand which possesses the whole power of either of the other departments.

Mr. Baker, who was Secretary of War of the United States at the time the Jones Law was adopted, and who perhaps was more familiar with its meaning and purpose than any other one person, wrote a letter to Governor-General Harrison, in which he said in general terms that "it would seem to be the

part of wisdom for the President and the Governor-General to admit of no encroachment on those powers placed in their hands."

Energy and constancy in the executive department of the government is a leading element in the definition of good government. They are essential to the protection of the people of the state against foreign attack; they are not less essential to the steady administration of the law; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice and administration of the law; to the security of liberty against the enterprises and assaults of ambition, of faction and of anarchy. A feeble executive in the administration of his department implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government. Delay in the administration of the laws will lead to injustice, dissensions, turmoils and disorder.

While the legislature has authority to adopt laws and the courts are possessed with power to construe them, yet finally in its largest sense, the

administration of a government and the execution of the laws so adopted and construed is finally left in the hands of the executive department of the government.

FORMS OF GOVERNMENT WHICH HAVE EXISTED IN THE PHILIPPINE ISLANDS SINCE AMERICAN OCCUPATION

Since the 13th day of August, 1898, there have existed in the Philippines several distinct forms of Government.

First.—A Military Government. From the 13th day of August, 1898, until the 1st day of September, 1900, there existed a Military Government in the Philippine Islands under the authority of the President of the United States. That Government exercised all of the powers of government, including executive, legislative and judicial.

Second—Divided Military and Civil Government. From the 1st day of September, 1900, to July 4, 1901, the legislative department of the Government was transferred from the Military Governor to the United States Philippine Commission, to be thereafter exercised by said Commission in the

place and stead of the Military Government, under such rules and regulations as the Secretary of War might prescribe, until the establishment of the Civil Central Government for the Islands, or until Congress should otherwise provide. During that period the executive authority was vested in the Military Governor while the legislative authority was vested in the Philippine Commission. (See Instructions of the President of the United States to the United States Philippine Commission, April 7, 1900.) On the 4th day of July, 1901, the executive power theretofore possessed by the Military Governor was transferred to the President of the United States Philippine Commission.

Third—Civil Government. From the 4th day of July, 1901, to the 16th day of October, 1907, the executive and legislative powers of the Philippine Government were possessed by the United States Philippine Commission. The President of the Commission not only possessed and exercised the executive power of the Government but sat as a member of the United States Philippine Commission as a member of the legislative department of the Government.

Fourth—Legislative Department of the Government Divided into Two Branches. On the 16th day of October, 1907, the Legislative Department of the Government was divided into two branches—the United States Philippine Commission, and the Philippine Assembly—which form continued up to the 16th day of October, 1916. The Governor-General during that period not only possessed the executive powers of the Government, but acted as a member of the branch of the legislative department, known as the United States Philippine Commission.

Fifth—Legislative Department of the Government Separated from the Executive Department. From the 16th day of October, 1916, until the present time, by virtue of the provisions of the Jones Law, the executive and legislative departments of the Government have been separated, each constituting a separate and distinct department of government; the first, represented by the Governor-General and the second, by the Philippine Legislature.

In each of the separate forms of government above mentioned there existed the executive, legislative and judicial powers fully established and recognized by the only authority for the existence of said Government,—the Government of the United States.

DUTY OF THE GOVERNOR-GENERAL OF THE PHILIPINES WHEN ADVISED OF ILLEGALITY OF A LAW—HE MAY DISREGARD IT OR FORMULATE A PROPER ISSUE TO BE PRESENTED TO THE COURT CONCERNING ITS LEGALITY

It is the sworn duty of the Governor-General of the Philippines to execute the laws. That duty, however, does not require him to execute an illegal act of the Legislature. When he is advised by his legal department that a certain act, or any part thereof, of the Legislature is illegal and void, he may do one of two things: (a) he may disregard it and refuse to execute it, or (b) he may formulate an issue upon the alleged illegality and have that question presented to the courts for solution. He is acting within his powers whichever of these courses he selects to take. To disregard an illegal and void act of the Legislature is neither tyranny nor a violation of his sworn duty. It would be a violation of his sworn duty to enforce or permit the enforcement of an illegal act.

RIGHT OF DIFFERENT DEPARTMENTS TO CONSTRUE POWERS GRANTED UNDER THE CONSTITUTION OR CHARTER

While in many jurisdictions a provision exists by virtue of which the executive and legislative de-

partments may, in case of doubt as to their powers, refer the question to the courts for decision, no such provision exists in the Philippines. In the absence of such provision it becomes necessary therefore in the first instance, when a duty is to be performed, for said departments to pass upon the question of their power to act. Every department of government invested with constitutional or charter powers must, in many instances, be the judge of their powers, or they could not act. Such interpretation of their powers is not exclusive. The parties aggrieved may resort to the courts for a judicial interpretation.

Cooley's Constitutional Limitations, 73.

EXCLUSIVE DUTY OF THE GOVERNOR-GENERAL TO PROTECT THE PROPERTY OF THE GOVERNMENT

It is the duty of the Governor-General, as the supreme executive power, to protect the property of the Government. If he, by negligence or inattention to that responsibility, permits the property of the Government to be wasted, destroyed or lost, he subjects himself to the danger of impeachment. His responsibility is then one of great seriousness. He

should not supinely disregard it. While the legislative department of the Government may adopt laws for safeguarding and protecting the property, public and private, it cannot intervene in the enforcement of such law. The legislative department would thereby be taking part, not only in the enactment of laws but in the execution of the same, which is not permitted under the American Constitution and system of laws.

WHAT HAS BEEN DONE BY LEGISLATIVE DEPARTMENT FURNISHES NO CRITERION AS TO REAL POWERS

In support of the contention that the President of the Senate and the Speaker of the House of Representatives, under Act 2705 as amended by Act 2822 have a right to intervene in the execution of said laws, our attention is called to many acts of legislative bodies, where such bodies have not only enacted laws but have made provisions in the same, by which they have intervened in their execution. The cited cases support the allegations of the respondents. Our attention is called especially to Acts Nos. 69, 1415, 1841, 1849, 1870, 1981, 2023, 2479, 2510, 2593, 2957 and 3208 as well as to many acts

of the legislatures of different states of th eUnion. It is true that in each of the various acts cited, of the Philippine Legislature, a provision is made for the appointment of certain persons to assist in their execution.

No question has ever been raised concerning the powers of the Legislature in respect of said acts. The mere fact, however, that the legality of said acts has never been questioned and their legality has been passed *sub silentio*, does not create a conclusive presumption that they were in fact adopted within the powers of the legislative department of the government. The fact that a statute has been accepted as valid and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing on its validity where the question is properly raised and presented.

McGirr vs. Hamilton et al., 30 P. R. 563 and cases cited.

LEGALITY OF THAT PROVISION OF ACT 2705, AS AMENDED BY ACT 2822 CREATING THE "VOTING COMMITTEE"

In addition to the contention that the Legislature, by virtue of the provisions of Acts 2705 and

2822, not only attempted to legislate but to participate in the execution of its laws, there is still another objection to the legality of that provision of said acts which creates the "Voting Committee". One of the inhibitions against the power of the Philippine Legislature is found in one of the subparagraphs of section 3 of the Jones Law. Said subparagraph provides: "That no bill (public or private) which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in the title of the bill." The title of Act 2705 reads: "An Act to Create the National Coal Company". The title of Act 2822 is: "An Act to Amend Certain Sections of Act 2705 Entitled 'An Act to Create the National Coal Company'." Act 2822 does not amend that provision of Act 2705 relating to the "Voting Committee". The inhibition, therefore, of the Jones Law need not be discussed with reference to the provisions of Act 2822.

Many of the states of the Union have adopted similar constitutional provisions. The purpose of this legislative restriction and the evils sought to be remedied thereby are clearly stated by Mr. Sutherland, now an Associate Justice of the Supreme Court

of the United States, in his valuable work on Statutory Construction. In section 111 he says that:

"In the construction and application of this constitutional restriction the courts have kept steadily in view the correction of the mischief against which it was aimed. The object is to prevent the practice, which was common in all legislative bodies where no such restriction existed, of embracing in the same bill incongruous matters having no relation to each other or to the subject specified in the title, by which measures were often adopted without attracting attention. Such distinct subjects represented diverse interests, and were combined in order to unite the members of the legislature who favor either in support of all. These combinations were corruptive of the legislature and dangerous to the State. Such *omnibus* bills sometimes included more than a hundred sections on as many different subjects, with a title appropriate to the first section, 'and for others purposes.'

"The failure to indicate in the title of the bill the object intended to be accomplished by the legislation often resulted in members voting ignorantly for measures which they would not knowingly have

approved; and not only were legislators thus misled, but the public also; so that legislative provisions were steadily pushed through in the closing hours of a session, which, having no merits to commend them, would have been made odious by popular discussion and remonstrance if their pendency had been reasonably announced. The constitutional clause under discussion is intended to correct these evils; to prevent such corrupting aggregations of incongruous measures, by confining each act to one subject or object; to prevent surprise and inadvertence by requiring that subject or object to be expressed in the title."

In the case of Walker vs. State (49 Ala., 329), the Supreme Court of Alabama stated the proposition as follows—citing and quoting from Cooley's Constitutional Limitations, p. 143:

"The object sought to be accomplished and the mischief proposed to be remedied by this provision are well known. Legislative assemblies, for the dispatch of business, often pass bills by their titles only without requiring them to be read. A specious title sometimes covers legislation which, if its real character had been disclosed, would not have command-

ed assent. To prevent surprise and fraud on the legislature is one of the purposes this provision was intended to accomplish. Before the adoption of this provison the title of a statute was often no indication of its subject or contents.

"An evil this constitutional requirement was intended to correct was the blending in one and the same statute of such things as were diverse in their nature, and were connected only to combine in favor of all the advocates of each, thus often securing the passage of several measures no one of which could have succeeded on its own merits. Mr. Cooley thus sums up in his review of the authorities defining the objects of this provision: 'It may therefore be assumed as settled that the purpose of this provision was: First, to prevent *hodge-podge* or log-rolling legislation; second, to prevent surprise or fraud upon the legislature by means of provisions in bills of which the titles gave no information, and which might therefore be overlooked and carelessly and unintentionally adopted; and, *third*, to fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered, in or-

der that they may have opportunity of being heard thereon by petition or otherwise if they shall so desire.'

"The practice," says the Supreme Court of Missouri, "of comprising in one bill subjects of a diverse and antagonistic nature, in order to combine in their support members who were in favor of particular measures, but neither of which could command the requisite majority on its own merits, was found to be not a corruptive influence in the Legislature itself, but destructive of the best interests of the State. But this was not more detrimental than that other pernicious practice, by which, through dexterous and unscrupulous management, designing men inserted clauses in the bodies of bills, of the true meaning of which the titles gave no indication, and by skillful maneuvering urged them on to their passage. These things led to fraud and injury, and it was found necessary to apply a corrective in the shape of a constitutional provision."

City of St. Louis vs. Tiofel, 42 Mo., 590

The authorities are to all intents uniform that this constitutional requirement is *mandatory* and

not *directory*. Sutherland on Statutory Construction, section 112, states the rule correctly as follows:

"The efficiency of this constitutional remedy to cure the evil and mischief which has been pointed out, depends on judicial enforcement; on this constitutional injunction being regarded as *mandatory*, and compliance with it essential to the validity of legislation. The mischief existed notwithstanding the sworn official obligation of legislators; it might be expected to continue notwithstanding that that obligation is formulated and emphasized in this constitutional injunction if it be construed as addressed exclusively to them and only directory. It would in a general sense be a dangerous doctrine to announce that any of the provisions of the constitution may be obeyed or disregarded at the mere will or pleasure of the legislature unless it is clear beyond all question that such was the intention of the framers of that instrument. It would seem to be a lowering of the proper dignity of the fundamental law to say that it descends to prescribing rules of order in unessential matters whcih may be followed or disregarded at pleasure. The fact is this: That whatever constitutional provision can be looked upon as directory merely is very likely to be treated by

the legislature as if it was devoid of moral obligation, and to be therefore habitually disregarded."

In the case of Walker vs. State (49 Ala., 329) *supra*, the court said:

"It is the settled law of this court, founded on reasoning which seems to us unanswerable that this provision of the constitution is not a mere rule of legislative procedure, directory to the general assembly, but that it is mandatory, and it is the duty of courts to declare void any statute not conforming to it."

Justice Cooley, in his work on Constitutional Limitations (pp. 179-180) states that our courts have held, without exception, that such constitutional provision is *mandatory*.

Central Capiz vs. Ramirez, 40 P. R. 883

Inasmuch as the body of said Act contains a provision to which no reference is made in the title, in view of the well established authorities, we are forced to the conclusion that, that provision creating the "Voting Committee" is illegal. That illegality, however, is one which may be separated from the rest of the act without affecting the legality of the other provisions.

THE "VOTING COMMITTEE" AS PUBLIC OFFICERS OF THE GOVERNMENT

It is argued most earnestly by the petitioner, and denied with equal earnestness by the respondents, that the President of the Senate and the Speaker of the House of Representatives, acting as members of the "Voting Committee" in participating in voting the stock of the National Coal Company, were acting as *public officials* of the government and that the Legislature is without authority to appoint public officials for that purpose or to appoint public officials at all for any purpose. It is admitted by both parties that the National Coal Company is a private corporation. It is admitted that the Government of the Philippine Islands is a stockholder. The law provides that the Governor-General, the President of the Senate and the Speaker of the House of Representatives at a stockholders' meeting shall act as a committee for the purpose of voting said stock. Does that fact make the President of the Senate and the Speaker of the House of Representatives public officials? In the voting of the stock do they stand in any different relation to the Government and the National Coal Company than any other holders of stock? Are they not governed by

the same laws and by-laws of the corporation like other stockholders?

Mr. Justice Marshall, in the case of the Bank of the United States vs. Planters' Bank of Georgia (22 U. S. Rep., 904 (Feb. 18, 1824)), in discussing the question of the relation of the Government to private corporations when it becomes a stockholder in a private corporation, said, among other things: "It is, we think, a sound principle, that when a government becomes a partner in any trading company it divests itself, *so far as concerns the transactions of that company*, of its sovereign character, and takes that of a private citizen. Instead of communicating to the Company (or corporation) its privileges and its (sovereign) prerogatives, it descends to the level with those with whom it associates itself, and takes the character which belongs to its associates and to the business which is to be transacted * * *. As a member of a corporation, a Government never exercises its sovereignty. It acts merely as a corporator and exercises no other powers in the management of the affairs of the corporation, than are expressly given by the incorporating act. The Government of the Union held shares in the Bank of the United States; but the

privileges of the Government were not imparted by that circumstance to the Bank. The state of Georgia by giving to the Bank the capacity to sue and be sued voluntarily strips itself of its sovereign character, so far as respects the transactions of the Bank, and waives all the privileges of that character."

The doctrine announced by Chief Justice Marshall in that case has been followed without modification not only by the courts but by all of the eminent authors who have written upon that particular question.

Thompson on Corporations, Vol. 1, sec. 167

Bank of Kentucky vs. Wister, 27 U. S. 318, 322

Briscoe vs. Bank of Kentucky, 36 U. S. 256, 324

Louisville Railway Co. vs. Letson, 43 U. S. 497, 550

Curran vs. State of Arkansas et al., 56 U. S. 309

Veazie Bank vs. Fenno, 75 U. S. 551

Railroad Co. vs. Commissioners, 103 U. S. 1, 4

Hopkins vs. Clamson College, 221 U. S. 636, 644

Putnam vs. Ruch et al., 56 Fed. Rep. 418

Western Union Tel. Co. vs. Henderson, 68 Fed Rep. 591

U. S. vs. Chesapeake & D. Canal Co., 206 Fed. Rep. 967

Encyclopedia of the U. S. Supreme Court Rep. Vol. 11, p. 225

Encyclopedia of the U. S. Supreme Court Rep. Vol. 3, p. 124

Encyclopedia of the U. S. Supreme Court Rep. Vol. 4, p. 643

The petitioner as well as the respondents cite many cases in support of their respective contentions. The petitioner cites the following cases:

Pratt vs. Breckinridge, 112 Ky. 1

State vs. Brill, 100 Minn. 499

State vs Denny, 118 Ind. p. . . (4 L. R. A. 79.)

State vs. Washburn, 167 Mo. 680

State vs. Stanley, 66 N. C. 59

Walker vs. Bledsoe, 68 N. C. 457

Howerton vs. State, 68 N. C. 546

Myers vs. United States, U. S. Advance Opinions 1926-1927, p. 27

Concepcion vs. Paredes, 42 P. R. 599

Cases Cited by Respondents:

The Smithsonian Institution

Mechem's Public Officers, Sec. 1

Olmstead vs. The Mayor, etc., 42 N. Y. Sup. Ct. 481

United States vs. Germaine, 99 U. S. 508

McArthur vs. Nelson, 81 Ky. 67

Congressional Reports, Vol. II

State vs. Kennon, 7 Ohio State 562

See also:

Walker vs. City of Cincinnati, 21 Ohio State 14 (8 Am. Rep. p. 24)

State vs. Hocker, 39 Fla. 477 (63 Am. St. Rep. 174)

Butler vs. Walker, 98 Ala. 358

After a careful analysis of all of the authorities cited, it is difficult to conclude just what is the weight of authority, in view of the decision of Chief Justice Marshall quoted above. If the Government acts merely as one of the corporators of the National Coal Company and exercises no other power in the management of the affairs of the corporation than the one expressly given by the incorporatory Act, it is difficult to understand how the "Voting

Committee" is acting as a public officer. It was not the intention of the Legislature to make the President and Speaker officers of the Government. The Legislature simply intended to add additional duties to said officers. But after all, in our opinion, the fact that the Legislature enacted the law and at the same time provided that, through the President and Speaker, it (the Legislature) should assist in the execution of the same, is sufficient to nullify that provision. It is a matter of no importance in what capacity they acted. The Legislature had no authority to take part in the execution of the particular law.

THE RIGHT OF THE COURT TO DECIDE THE QUESTION, WHAT ARE THE RESPECTIVE POWERS OF THE DIFFERENT DEPARTMENTS OF GOVERNMENT

It is conceded by all of the eminent authorities upon constitutional law that the courts have authority to finally determine what are the respective powers of the different departments of government.

"The question of the validity of every statute is first determined by the legislative department of the Government, and the courts will resolve every

presumption in favor of its validity. Courts are not justified in adjudging a statute invalid in the face of the conclusions of the legislature, when the question of its validity is at all doubtful. The courts will assume that the validity of a statute was fully considered by the legislature when adopted. Courts will not presume a statute invalid unless it clearly appears that it falls within some of the inhibitions of the fundamental laws of the state. The wisdom or advisability of a particular statute is not a question for the courts to determine. If a particular statute is within the constitutional power of the legislature to enact, it should be sustained whether the courts agree or not in the wisdom of its enactment. If the statute covers subjects not authorized by the fundamental laws of the land, or by the constitution, then the courts are not only authorized but are justified in pronouncing the same illegal and void, no matter how wise or beneficent such legislation may seem to be. Courts are not justified in measuring their opinions with the opinion of the legislative department of the Government, as expressed in statutes, upon questions of the wisdom, justice and advisability of a particular law. In exercising the high authority conferred upon the

courts to pronounce valid or invalid a particular statute, they are only the administrators of the public will, as expressed in the fundamental law of the land. If an act of the legislature is to be held illegal, it is not because the judges have any control over the legislative power, but because the act is forbidden by the fundamental law of the land and because the will of the people, as declared in such fundamental law, is paramount and must be obeyed, even by the legislature. In pronouncing a statute illegal, the courts are simply interpreting the meaning, force, and application of the fundamental law of the state."

Case vs. Board of Health, 24 P. R. 250, 251

The judicial department of the Government may examine every law enacted by the legislative branch of the Government when the question is properly presented for the purpose of ascertaining:

(a) Whether or not such law came within the subject-matter upon which the legislative branch of the Government might legislate; and

(b) Whether the provisions of such law were in harmony with the authority given the legislature.

If the judicial branch of the Government finds (a) that the legislative or executive branches of the Government had authority to act upon the particular subject, and (b) that the particular law contained no provisions in excess of the powers of such department and the acts of the executive were within his powers, then that investigation, or that conclusion conclusively terminates the investigation by the judicial department of the Government.

SOLICITUDE OF THE GOVERNMENT OF THE UNITED STATES AND ITS REPRESENTATIVES IN THE PHILIPPINE ISLANDS FOR THE WELFARE AND WELL BEING OF THE INHABITANTS

No Government, past or present, has more carefully and watchfully guarded and protected, by law, the individual rights of life and property of the citizens of the Philippine Islands than the Government of the United States and its representatives. Each of the three departments of the Government has had separate and distinct functions to perform in this great labor. The history of the Philippine Islands, covering a period of more than a quarter

of a century, discloses the fact that each department has performed its part well. No one department of the Government can or ever has claimed, within its discretionary and legal powers, a greater zeal than the others in its desire to promote the welfare of the individual citizen. They are all joined together in their respective spheres and departments, harmoniously working to maintain good government, peace, and order to the end that the rights of each citizen in his life and property be equally protected. No one department can claim that it has a monopoly of these benign purposes of the Government. Each department has an exclusive field, under the law, within which it can perform its part, within certain discretionary limits. No other department can claim a right to enter these discretionary and legal limits and assume to act there. No presumption of an abuse of these discretionary powers by one department will be considered, permitted or entertained by another. Such conduct on the part of one department, instead of tending to conserve good government and the rights of the people, would directly tend to destroy the confidence of the people

in the Government and to undermine the very foundations of the Government itself.

CONCLUSION

For all of the foregoing reasons the petition for the extraordinary legal writ of quo warranto should be granted, and that Milton E. Springer, Dalmacio Costas and Anselmo Hilario are each illegally and unlawfully occupying the position of member of the Board of Directors of the National Coal Company and should be ousted and altogether excluded therefrom; that Romarico Agcaoili, H. L. Heath and Salvador Lagdameo have been duly and legally elected as members of the Board of Directors of the National Coal Company, and judgment is rendered that they be immediately inducted into said position, to take charge thereof and to perform the duties incumbent upon them as members of the Board of Directors. The demurrer is overruled. Considering the petition and demurrer in relation with the stipulated facts, there seems to be no reason for permitting an answer to be filed. And without any finding as to costs, it is so ordered.

(Sgd.) E. FINLEY JOHNSON.

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS
SUPREME COURT OF THE PHILIPPINE ISLANDS
IN BANC

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, *Plaintiff,* *vs.* MILTON E. SPRINGER, DALMACIO COSTAS, and ANSELMO HILARIO, *Defendants.*	"QUO WARRANTO" R. G. No. 26979. Justices Present: Avanceña, C. J. Johnson, Street, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ.

x x

AVANCEÑA, C. J., and JJ. VILLAMOR and VILLAREAL, *dissenting*:—

Much to our regret we have to dissent from the majority whose opinion has always commanded our respect.

In the case of the National Coal Company v. the Collector of Internal Revenue, 46 Phil. Rep., 583, this Court said:

"THE NATIONAL COAL COMPANY, A PRIVATE CORPORATION, SUBJECT TO THE PAYMENT OF INTERNAL REVENUE UNDER THE PROVISIONS OF SECTION 1496 OF THE ADMINISTRATIVE CODE. The National Coal Company is a private corporation. The fact that the Government happens to be a stockholder therein does not make it a public corporation. It is subject to all the provisions of the Corporation Law in so far as they are not inconsistent with Act No. 2705. As a private corporation, it has no greater powers, rights, or privileges than any other corporation which might be organized for the same purpose under the Corporation Law. It was not the intention of the Legislature to give it a preference, or right, or privilege over other legitimate private corporations in the mining of coal. The law made no provision for its occupation and operation of coal-bearing lands, to the exclusion of other persons or corporations, under proper permission. The National Coal Company being a private corporation, neither the lessee nor the owner of the lands upon which it mined coal for the year in question, is subject to the payment of the internal revenue duty provided for in section 1496 of the Administrative Code."

The National Coal Company, having been created and established by the Philippine Legislature for

the purpose of developing the coal industry in the Philippine Islands, in harmony with the general plan of the Government to encourage the development of the natural resources of the country, what relation does it bear with said Government? Is it an agency or instrumentality thereof empowered to perform some government act or function for governmental purposes?

Agency or instrumentality is defined to be a means by which a certain act is done (2 C. J. 420; 32 C. J. 947). So governmental agency or instrumentality may be defined as a means by which a government acts, or by which a certain governmental act or function is performed. A governmental act is a term sometimes used to describe an act done in pursuance of some duty imposed by the state on a person, individual or corporate, which duty is one pertaining to the administration of government and as an absolute obligation on a person who receives no profit or advantage peculiar to himself for its execution (28 C. J. 753, n. 1). Naturally, when a government acts it does so for purposes of its own. Now, what is the purpose of government? "A government does not exist in a personal sense, or as an entity in any primary sense, for the purpose of ac-

quiring, protecting or enjoying property. It exists primarily for the protection of the people in their individual rights, and holds property not primarily for the enjoyment of property accumulations, but as an incident to the purpose for which it exists—that of serving the people and protecting them in their rights." (Curley v. U. S., 130 Fed. 1; 28 C. J. 750.) "The term governmental purposes, as used in the constitution which provides that public property taken for public purposes is exempt from taxation, means, in its most extensive sense, the punishment for crime, for prevention of a wrong, the enforcement of a private right, or in some manner preventing wrong from being inflicted upon the public or an individual, or redressing some grievance, or in some way enforcing a legal right, or redessing or preventing a public individual injury." (Owenboro v. Com. 105 Ky. 344; 28 C. J. 753, n. 8.)

In the light of the above definitions, let us inquire what governmental act or function does the National Coal Company perform, and for what governmental purposes.

As was stated by this Court in the above cited case, "As a private corporation, it has no greater rights, powers, or privileges than any other corporation which might be organized for the same purpose under the Corporation Law. It was not the intention of the legislature to give it a preference, or right, or privilege over other legitimate corporation in the mining of coal. The law made no provision for its occupation of coal-bearing lands to the exclusion of other persons or corporations, under proper permission." It is subject to the payment of internal revenue tax on its coal output. The Philippine Government owns nothing in said corporation except the stock which it has purchased therein. The National Coal Company cannot perform any governmental act, for it has not been authorized to do so. The fact that it has been created and established for the purpose of developing the coal industry in the Philippine Islands, in harmony with the general plan of the Government to encourage the development of the natural resources of the country, and the fact that the Government owns a majority of the stock thereof, are not alone sufficient to give the National Coal Company the distinction of being an agency or instrumentality of said

Government, just as the investment of government money in any other corporation of the same nature or in a radio corporation to which it has given a charter for the purpose of encouraging the development of radio communication in the Islands is not by itself sufficient to make of such a corporation an agency or instrumentality of the Government in the political and administrative sense of the term.

If the National Company is a private corporation, and is not a government agency or instrumentality, what standing has the Government in said corporation by virtue of its ownership of a majority of its stock?

In the case of the Bank of the United States v. The Planters' Bank of Georgia, 6 L. Ed. 244, Chief Justice Marshall said:

> "It is, we think, a sound principle, that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to

> the business which is to be transacted. Thus, many states of this Union who have an interest in banks, are not suable even on their own courts; yet they never exempt the corporation from being sued. The State of Georgia, by giving to the bank the capacity to sue and be sued, voluntarily strips itself of its sovereign character, so far as respects the transactions of the bank, and waives all the privileges of that character. As a member of a corporation, a government never exercises its sovereignty. It acts merely as a corporator, and exercises no other power in the management of the affairs of the corporation, than are expressly given by the incorporating act." (The Bank of the United States vs. The Planters' Bank of Georgia, 22-25, U. S. Rep., 6 L. Ed. 244.)

In the case of the Bank of Kentucky v. Wister et al., 7 L. Ed. 323, the Court, after citing the above paragraph, added:

> "To which it may be added, that if a State did exercise any other power in or over a bank, or impart to it sovereign attributes it would be hardly possible to distinguish the issue of the paper of such banks from a direct issue of bills of credit; which violation of the Constitution, no doubt the State has intended to avoid."

The Government of the Philippine Islands, as a stockholder, has a right to participate in the election of the Directors of the National Coal Company by the exercise of its voting power. In so doing it acts merely as a corporator with no other power than are expressly granted by the Corporation Law, and does not exercise its sovereignty. It cannot impose its sovereign will, but it must act according to the by-laws of the corporation. The only control it has is what is given to it by the amount of its stock.

The Government, as a stockholder, has a right to appoint or designate a proxy to vote its stock in the National Coal Company, and the Philippine Legislature has done this for it by creating in the same Act a voting committee to be composed exclusively of the Governor-General, the President of the Senate and the Speaker of the House of Representatives. Now the question arises whether or not the position of a proxy of the Government in said corporation is a public office.

> "An office is defined by good authority as involving a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit

> of the public, by which it is distinguished from employment or contract." (Mechem Pub. Off. quoted in Barnhill v. Thompson, 122 N. C. 493, 495, 29 S. E. 720.)

The word "office" mentioned in the constitution means a position having to do with the general government of the State (Walker v. Cincinnati, 21 Ohio St. 145), and the same meaning must be given to the word "office" mentioned in the Jones Law, which has the character of a constitution.

Does the committee in voting the stock of the Government perform any sovereign function of government?

The Government participates in the management of the affairs of the National Coal Company every time it exercises by proxy the right of voting in the election of its directors, and, according to Chief Justice Marshall, in so doing it acts as a corporator merely and does not exercise any sovereign power. Its proxy, in performing his duty exercises no greater power. And it cannot be otherwise, for we would have the absurd result of an agent exercising a higher power than that of the principal in the fulfilment of the latter's mandate. If the voting of the stock of the Government in the election

of directors of the National Coal Company is the act, not of the Government in its sovereign capacity, but of a corporator merely, the designation of the members of the voting committee by the Government to vote its stock does not involve a delegation of a sovereign function of government, for the function delegated is of a private and not of a public nature.

The case of State v. Stanley, 66 N. C. 59, 8 Am. Rep., 488, cited in the brief for the plaintiff, wherein it was held that membership in a committee, composed of the President of the Senate and the Speaker of the House of Representatives of the State of North Carolina, is an office, is not in point, for said committee was entrusted with the appointment of directors and proxies in all the corporations in which the State was a stockholder; while the committee under consideration has no other power except to vote the stock of the Government in the National Coal Company. In that case the committee was an appointer of directors and proxies; in this case the committee is a mere proxy.

Is the public directly benefited by the exercise of the delegated power of voting the stock of the Government by the committee? When the commit-

tee votes the stock of the Government, as a stockholder, the corporation and its stockholder alone are directly benefited by the act, and the public only indirectly by way of an increased material prosperity. But this is not the kind of benefit that is sought to be obtained by the creation of a public office. It is the benefit that is deserved from the protection of life, liberty, property and the pursuit of happiness.

The voting of the stock of the Government which is delegated to the committee, not being a part of the sovereign functions of the said Government, and not being exercised for the direct benefit of the public, membership therein is not a public office.

Let us now examine into the question whether or not the designation of the President of the Senate and the Speaker of the House of Representatives, as ex-oficio members of said committee, by section 4 of Act 2705, as amended by Act 2822, is constitutional, and therefore valid.

If the membership in the voting committee is not a public office, the designation by the Philippine Legislature of its own members as members ex-oficio thereof is not in violation of the principle

of separation of powers. It will not be denied that the power of appointment to certain offices vested in the Governor-General by the Jones Law refers only to public executive office; that his power of supervision and control is limited to public executive functions, and that the responsibility imposed upon him for the faithful execution of the laws refers only to laws of public nature. Membership in the voting committee, not being a public office the Governor-General has no power to appoint its members; the voting of the stock of the Government not being a public executive function, he has no supervision and control over it; and the law creating the National Coal Company and designating a voting committee not being a public law, he is not charged with the responsibility of executing it. Therefore, in creating the voting committee and designating the President of the Senate and the Speaker of the House of Representatives as ex-oficio members thereof the Philippine Legislature did not encroach upon any of the powers of the Governor-General.

The contention that the Legislature cannot execute its own laws, is contrary to the congressional interpretation expressed on various occasions, spe-

cially in the case of "The Smithsonian Institution". In incorporating it, the Congress has provided for its management "by a Board of Regents" named the Regent of the Smithsonian Institution, to be composed of the Vice-President, the Chief Justice of the United States, and three members of the Senate and three members of the House of Representatives; together with six other persons, other than members of the Congress, two of whom shall be resident of the city of Washington; and the other four shall be inhabitants of same State, but no two of them in the same State" (9 Fed. St. An. Sec. 588 (a)). The members of the Senate were to be appointed by the President thereof; and the members of the House, by the Speaker thereof. Granting, for the sake of argument, that membership in the voting committee is a public office, does the designation of the President of the Senate and of the Speaker of the House of Representatives as ex-oficio members of the said committee an encroachment upon the power of appointment to office vested in the Governor-General?

No challenge seems to have been made to the power of the Philippine Legislature to designate the Governor-General or any other executive officer to serve on said voting committee or any public office,

and a challenge of that nature, if made at all, will find no support in the authorities (12 C. J. 837).

What is vigorously attacked is the power of the legislature to designate any of its members to serve on said voting committee, the contention being that the exercise of such power is a violation of the principle of separation of powers and an encroachment upon the power of appointment to office vested in the Governor-General by the Jones Law.

> "By some authorities the power of appointment to office is regarded as per se an executive function, which, therefore, may not be exercised, vested, or controlled by the legislature except in so far as it is a necessary incident to the exercise of the legislative power or is vested by the constitution in the legislature. By the great weight of authority, however, the power of appointment is held not to be per se an executive function, and unless the appointment of particular officers is, by the constitution, expressly conferred on the executive department or forbidden to the legislature the latter may, by statute, vest the power of appointment in its discretion. The ordinary constitutional distributive clause providing for the complete separation of governmental powers has generally been held insufficient to vest the appointing power sole-

ly in the executive. Thus a statute conferring on a circuit judge the power to fill vacancies in a board of park commissioners is valid. So a board of civil service commissioners may be appointed by the legislature for the purpose of prescribing qualifications for officers except such as are otherwise provided for in the constitution." (12 C. J. 836, par. 319, n. l.)

"A provision of the constitution precluding the legislature from electing or appointing officers does not invalidate an act creating a board of commission of which certain state officers shall be ex-oficio members, nor prevent the legislature from imposing new functions on existing officers." (12 C. J.. 837, par. 319 n. 5.)

"Under the American system of government the chief executive has no prerogative powers, but is confined to the exercise of those powers conferred upon him by the constitution and statute." (12 C. J., 898, par. 402; State v. Bowden, 92, S. C. 393; Richardson v Young, 122, Tenn. 471.)

This must be true of the Governor-General of the Philippine Islands, when section 21 of the Jones Law says in part:

"He shall, unless otherwise herein provided, appoint, by and with the consent of the

> Philippine Senate, such officers as may now be appointed by the Governor-General, or such as he is authorized by this Act to appoint, or whom he may hereafter be authorized by law to appoint."

The enumeration of the instances in which the Governor-General may make appointments, implies that he has not been empowered to make all appointments. The expression "whom he may hereafter be authorized by the law to appoint," implies clearly that there may be certain cases in which he may not be authorized to make appointments.

It is contended that the legislature may make such appointments where the source of power is the people or the constitution made by the people, as the residuum of power is entrusted in the legislature, but that this may not be done in the Philippine Islands where the source of power is the Congress of the United States, and the Philippine Legislature only acts by delegation of said body. The Congress of the United States, after enumerating the powers pertaining to each of the three departments of the Government and declaring which are the functions of each, has reserved to itself the power and authority to annul the laws enacted by the Philippine Leg-

islature, which must be reported to it (Jones Law, Sec. 19). If the Congress of the United States had intended to limit the powers of the Philippine Legislature to those enumerated by it in the Organic Act and to those of purely legislative character, it would seem that there would have been no necessity for making such reservation; because all laws passed by the Philippine Legislature which are within its powers will of necessity be valid, and all laws in excess of its powers will be null and void, and the courts will so declare them. It is only when a residuum of power is left with a legislature which does not owe its powers to the people or to a constitution made by the people, as the Philippine Legislature, that such reservation becomes necessary; for it may exercise a power which the Congress had not intended it should exercise, and which the latter may be powerless to correct, giving room to doubts with no other means of solving them except by judicial decision, which may be precisely the contrary of what the Congress may have intended. If such reservation of power and authority has any meaning at all, as it must have, it cannot be other than to avoid doubts and uncertainties as to the authority of the legislature to enact certain laws, by permitting those

affected by them to determine by the action or inaction of Congress whether or not such power was one of those constituting the residuum.

Furthermore, nothing could have prevented the Congress of the United States from giving to the Philippine Legislature the power of appointment to an office which have not previously been vested expressly in the Governor-General, as nothing had prevented it from placing in the hands of the Philippine Commission not only executive but legislative powers as well. If so, there is nothing that can prevent it from ratifying any law by which executive offices are created and filled by the legislature with its own members. Ratification may be made either expressly or impliedly. Act 2705, as amended by Act 2822, having been reported to Congress, the failure of the latter to annul it was equivalent to an implied ratification.

In the case of Fajardo Sugar Co. of Porto Rico v. Holcomb, decided on November 23, 1926, the Federal Court of the First Circuit said:

> "If, turning from the section specifically dealing with the powers of the auditor, we look more broadly at the structure of the

Government of Porto Rico provided under the Organic Act,—we are driven to the same conclusion. Under that Act, the Governor-General, Attorney-General, Commissioner of Education and Auditor are presidential appointees. The Governor has, in general, the powers of the Governor of one of our states, and, besides, he is required annually to make official report of the transactions of the government of Porto Rico to the executive department of the United States, to be designated by the President, and the said annual report shall be transmitted to the Congress. Moreover, in section 34 (Comp. St. par. 3803 n), it is provided that if, after veto of the Governor, the Legislature shall by a two-thirds vote pass an Act over the veto, the Governor, if se shall not then approve, shall transmit the proposed Act to the President of the United States; that 'if the President of the United States approve the same he shall sign it and it shall become a law. If he shall not approve same, he shall return it to the Governor so stating, and it shall not become a law.' It follows that no Act can become a law without the approval of the Porto Rican Governor, a presidential appointee, or the President of the United States. There is also a provision in section 34 that:

> 'All laws enacted by the legislature of Porto Rico shall be reported to the Congress of the United States * * * * which hereby reserves the power and authority to annul same.'

If not thus annulled, within reasonable time, there is a presumption that they are approved. Tiaco v. Forbes, 228 U. S. 549, 558, 33 S. Ct. 585, 57 L. Ed. 960; Porto Rico v. American, etc. R. R. 254 F. 369, 165 C. C. A. 589; Camunas v. P. R. Ry. (C. C. A.) 272 F. 924, 931, and cases cited.

The result is that all Porto Rican legislation now on the statute books is—in a very real sense, though indirectly,—the output of our federal government. Under such conditions, the court should not lightly assume that the tax acts of Porto Rico, now contended to be in conflict with section 20 of the Organic Act, are inconsistent and therefore invalid. Doubtless the relation of the Organic Act to the Porto Rican Government is, in certain aspects, like the relation of a state Constitution to a state Legislature. Camunas v. P. R. Ry., etc., Co. (C. C. A.) 272 F. 924, 928.

But the analogy is not complete; for, after all, the Organic Act is nothing but federal legislation, and Porto Rican legislation, approved expressly or impliedly by Congress, has exactly the same import."

The only prohibition to the appointment of members of the Philippine Legislature to executive public offices is that contained in section 18 of the Jones Law, which says that "No Senator or Representative shall, during the time for which he may have been elected, be eligible to any office the election to which is vested in the Legislature, nor shall be appointed to any office of trust or profit which shall have been created or the emoluments of which shall have been increased during such term." The present Speaker of the House of Representatives is clearly not within said prohibition, as Act 2705 creating said committee was enacted in 1917, before his term of office began in 1922; so the now President of the Senate, for while the said Act was passed during his term of office, that term had already expired in 1922, and he is now serving another term (1922-1928).

Therefore, the Philippine Legislature may not only create the voting committee but designate the President of the Senate and the Speaker of the House of Representatives as ex-oficio members of said committee, always granting, for the sake of argument, that membership therein is a public office.

It only remains now for us to dispose of another question, that of the power of the Governor-General to vote the stock of the Government alone, granting again, for the sake of argument, that section 4 of Act 2705, as amended by Act 2822, is unconstitutional in so far as it refers to the designation of the President of the Senate and the Speaker of the House of Representatives as ex-oficio members of the voting committee.

"The provision in the constitution as to distribution of powers, and as to the executive power of the state being vested in the Governor, is declaratory and does not confer specific power" (12 C. J. 898; Field v. Peo, 3 Ill. 79). The power to vote the stock of the Government is delegated to a committee to be composed exclusively of the Governor-General, the President of the Senate and the Speaker of the House of Representatives, and the rule is "Where the power is delegated for a mere private purpose, all the persons (if more than one); upon whom the authority is conferred must unit and concur in the exercise. In case of the delegation of a public authority to three or more persons, the authority conferred may be exercised and performed by a ma-

jority of the whole number. If the act to be done by virtue of such public authority requires the exercise of discretions and judgment,—in other words, if it is a judicial act,—the persons to whom the authority is delegated must meet and confer together, and be present when the act is performed; or at least a majority must meet, confer, and be present after all have been notified to attend. Where the act to be done is merely ministerial, a majority must concur and unite in the performance of the act, but they may act separately." (18 C. J. pag. 472, note 3-a; Perry v. Tynen, 22 Barb (N. Y. 137, 140).

Whether we consider the delegation of the power to vote the stock of the Government as for public or private purpose, the Governor-General alone cannot exercise it as the voting requires the exercise of discretion and judgment, and at least a majority must concur after all have been notified.

To recapitulate, we believe that we have demonstrated the following propositions:

1. That the National Coal Company is not an agency or instrumentality of the Government of the Philippine Islands.

2. That the Government of the Philippine Islands, as mere corporator, if it had to vote its own stock would have to do so in the capacity of a private citizen, and not in its sovereign capacity.

3. That the voting committee in exercising the power delegated to it does so in the same capacity as its principal.

4. That the voting of the stock of the Government is a private act, and the committee in doing so performs a private function, and therefore the membership therein is a private and not a public office.

5. That membership in the voting committee being a private position and not a public office, the designation by the Philippine Legislature of the President of the Senate and the Speaker of the House of Representatives as ex-oficio members thereof was not an encroachment upon the power of supervision and control over all executive functions of the Government vested in the Governor-General.

6. That even granting that membership in said committee is a public office, still the Philippine

Legislature has the power to designate the President of the Senate and the Speaker of the House of Representatives as ex-oficio members of said committee, by virtue of the residuum of power placed in its hands by the Congress of the United States.

7. That whether we consider the delegation of the voting power as for public or private purposes, the Governor-General alone cannot exercise that power as it requires discretion and judgment, and at least a majority must concur.

8. That, finally, the Congress of the United States by its reserved power and authority to annul any law of the Philippine Legislature, has by its silence impliedly ratified Act 2705 as amended by Act 2822.

For the foregoing considerations we are of the opinion that the demurrer should be sustained and the complaint be dismissed.

(Sgd.) RAMON AVANCEÑA.
(Sgd.) IGNACIO VILLAMOR.
(Sgd.) ANTONIO VILLA-REAL.

On the 4th day of April, 1927, the defendants presented the following:

(CAPTION AND TITLE OMITTED)
EXCEPTION AND MOTION

Now come the above-named defendants and except to the decision rendered by this Court on the 1st day of April, 1927, in the above-entitled action, and also except to the final judgment entered therein.

Notice is hereby given that the defendants intend to petition the Supreme Court of the United States for a writ of certiorari for the revision of the decision and judgment of this Court; and said defendants hereby make application for the retention of the record in said cause in this Court pending the preparation and certification of said record and the presentation of said petition to the Supreme Court of the United States.

The grounds, *inter alia*, upon which the defendants intend to petition the Supreme Court of the United States for a writ of certiorari for the revision of the decision and judgment of this Court hereinabove referred to are:

(1) That the decision and judgment of this Court are contrary to the law and the evidence;

(2) That in this action a statute of the United States is involved.

The defendants also pray for a stay of enforcement of the judgment of this Court during the pendency of the application for a writ of certiorari and of the proceedings to be had in the Supreme Court of the United States.

Manila, April 4, 1927.

JOSE ABAD SANTOS
ROSS, LAWRENCE & SELPH
PAREDES, BUENCAMINO & YULO
ARANETA & ZARAGOZA
CHARLES E. TENNEY
CAMUS, DELGADO & RECTO
MARIANO H. DE JOYA

By: (Sgd.) JOSE ABAD SANTOS,
Attorneys for the Defendants,
317-321 Masonic Temple, Manila.

COPY RECEIVED
this 4th day
of April, 1927.

(Sgd.) DELFIN JARANILLA,
Attorney-General, Manila.

On the 4th day of April, 1927, the plaintiff filed the following:

(CAPTION AND TITLE OMITTED)

MEMORANDUM OF PLAINTIFF IN OPPOSITION TO THE DEFENDANTS' FOR STAY OF EXECUTION

Broad considerations of public policy prohibit the granting of a stay of execution in this case. The effect of the decision herein is to hold that the voting of the government-owned stocks in the National Coal Company is exclusively an executive function, and that the Legislature may not absorb to itself or its officers any share of that voting power. Under existing legislation that function is vested in the Governor-General alone. To grant a stay would, in effect, operate to interfere with the Chief Executive of these Islands in the discharge of that executive function.

Furthermore, the administration of, and control over, millions of pesos of Government money, invested in the stocks of Government-owned corporations, are involved in the decision herein. It would be in the last degree impolitic to leave that administration and control in the hands of persons who, as the court has found, are strangers to these corporations and are usurping the powers of direct-

ors thereof. That administration and control involves problems that arise from day to day, the solution of which should not be left, in whole or in part, to men who are without authority to act in behalf of those corporations. The proper administration of this property demands that an immediate end be put to the present uncertainty and chaos.

The authorities hold that, in the absence of express statutory provision otherwise, a judgment of ouster in quo warranto proceedings is self-executing, requiring no process to make it effective, and that the filing of supersedeas bond, will operate, at the most, to stay execution for costs.

Thus in Foster v. Kansas, 112 U. S. 201, 28 L. Ed. 629, 630, the court said:

> "*The judgment operated of itself to remove Foster and leave his office vacant. It needed no execution to carry it into effect.*"

In Faucett v. Superior Court, 15 Wash. 342, 55 Am. St. Reports 894, the court said:

> "The question then is, What is the effect and nature of a judgment of ouster from a public office? It seems to be the settled rule that *such a judgment divests the person oust-*

ed of all official authority whatever, and fully and completely excludes him from the office as long as the judgment remains in force. High on Extraordinary Legal Remedies, 2nd Ed., Sec. 756; Mechem on Public Officers, Sec. 497.

"And a judgment in favor of a relator in a proceeding by information to try title to public office *is, from its very nature, self-executing. By its own force, and without the aid of process or further action of the court, it accomplishes the object sought to be attained.* So far, then, as such a judgment is concerned, there is nothing upon which a stay bond can operate, except an execution for costs, where, as in this case, costs are awarded to the relator. * * * The result of permitting such a judgment to be suspended by an appeal and stay bond would, for obvious reasons, in many instances, in effect, completely destroy the relator's remedy. * * * The following authorities are in point on the questions here involved: People v. Stephenson, 98 Mich. 218; State v. Woodson, 128 Mo. 497; Fylpaa v. Brown County (S. D. April 20, 1895), 62 N. W. Rep. 962; Allen v. Robinson, 17 Minn. 113; Jayne v. Drorbaugh, 63 Iowa 711; State v. Meeker, 19 Neb. 444; Walls v. Palmer, 64 Ind. 493; Elliott on Appellate Procedure, Secs. 392, 393."

In State v. Wilson, 121 N. C. 425, 480, 28 S. E. 554, 565, the Court, in passing upon two motions, one by the defendant to recall a writ of execution issued on a judgment of ouster in quo warranto proceedings, and the other to set aside the supersedeas proceedings, said—

> "We are also of the opinion that the judgment of this court, *ex propio vigore*, placed the relator in possession of the office at the time judgment was filed. He having qualified, no process was necessary for that purpose. * * * The judgment took effect immediately upon being filed, and is not superseded by the subsequent writ of error, regular or irregular. Foster v. Kansas, 112 U. S. 205, 5 Sup. Ct. 8, 97. * * * *"

In People v. Reimberg (1914), 263 Ill. 536, 105 N. E. 715, Ann. Cas. 1915C 343, in a mandamus proceeding to compel recognition of the relators as members of a board of education during the pendency of an appeal in quo warranto proceedings in which they had been successful, the court said—

> "It is further contended that to grant the writ in this case would prejudicially affect the rights of the parties in the quo warranto proceeding pending on appeal in the Appel-

late Court of the First District. The judgment of the Superior Court *is self-executing and requires no process to enforce it. An appeal bond or supersedeas bond will not operate to suspend such a judgment.* Barnes v. Chicago Typographical Union, No. 16, 232 Ill. 402, 83 N. E. 932, 122 Am. St. Rep 129, 14 L. R. A. (N. S.) 1150; 17 Enc. of Pl. & Pr. 489; 20 Enc. of Pl. & Pr. 1244.

See also—

Olmstead v. Distilling Co. 73 Fed. 44,
Fulgham v. Johnson, 40 Ga. 164,
Welch v. Cooks, 7 How. Prac 282.

Indeed, it is held that any attempt to resist such a judgment during the pendency of an appeal constitutes a contempt of the court rendering the judgment. Thus in State v. Wilson, *supra*, the court said—

"The relator being in office by virtue of the judgment of this court, any attempt by the defendant to exercise its functions, or to interfere with the full and free exercise thereof by the relator, and any attempt by any one else to interfere by alleged legal process or otherwise, unless and until the supreme

> court of the United States shall reverse the judgment of this court will be a contempt of this court."

Our opponents may argue that the foregoing cases deal with trials of title to public office, and not to corporate offices, and that different considerations apply to the latter. Our answer is that our statute makes no distinction. "Public civil office" and "office in a corporation" are dealt with as in pari materia, in subparagraph 1 of Sec. 197 of our Code of Civil Procedure. The reason is obvious. The purpose of a judgment of ouster from office in a corporation would, in many instances, be defeated, were a stay granted pending proceedings for the review thereof, just as would the purpose of a judgment of ouster from public office.

Our opponents may appeal to the provisions of Rule 42 of the Rules of this Court in support of their application for a stay of execution. Our answer is that those provisions have no application whatever to judgments which are, in their very nature, self-executing, as is the judgment in this case.

We submit, in view of the foregoing considerations, that the application of the defendants for a stay of execution should be denied.

Manila, P. I., April 4, 1927.

Respectfully submitted,

(Sgd.) DELFIN JARANILLA,
Attorney-General.

(Sgd.) HUGH C. SMITH.

DEWITT, PERKINS & BRADY,
By (Sgd.) C. A. DEWITT,
Special Counsel for Plaintiff.

On the same date, to wit, the 4th day of April, 1927, the Court issued the following order:

"On consideration of the motions of counsel for the defendants in the cases of The Government of the Philippine Islands vs. Milton E. Springer, et al., No. 26979, and of The Government of the Philippine Islands vs. Gregorio Agoncillo, et al., No. 27225, excepting to the decisions rendered by this Court on the first day of April, 1927, and to the final judgments entered therein, and praying for stays of enforcement of the judgments of this Court during the pendency of the application for

writs of certiorari and of the proceedings to be had in the Supreme Court of the United States; of the objections of counsel for the plaintiff in the above-mentioned cases to the granting of the application of the defendants for stays of execution; of the statements made at the hearing; and of the law, the decisions. and all pertinent arguments relating to the issue, the Court ordered that the exceptions be noted and that the prayer for stays be denied. Avanceña, C. J., and Villamor and Villa-Real, JJ., dissented, with regard to the stay of execution."

On the 11th day of April, 1927, the Clerk of the Court entered the following judgment:

(CAPTION AND TITLE OMITTED)

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 1st day of April, nineteen hundred and twenty-seven;

By virtue thereof it is hereby adjudged and decreed that the demurrer is overruled and the defendants are ousted and excluded from the offices

of directors of National Coal Company, without costs.

(Sgd.) MANUEL M. DE HASAÑAS,
Deputy Clerk, Supreme Court, P. I.
In Charge of Manila Office.

THE UNITED STATES OF AMERICA
PHILIPPINE ISLANDS
IN THE SUPREME COURT OF THE
PHILIPPINE ISLANDS

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing .... printed pages contain a true and correct transcript of the record of the case entitled The Government of the Philippine Islands, plaintiff, *vs.* Milton E. Springer, Dalmacio Costas and Anselmo Hilario, defendants, concerning quo warranto, bearing No. 26979 of the docket of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this .... day of ..... A. D., one thousand nine hundred twenty-seven.

V. ALBERT,
Clerk of the Supreme Court of
the Philippine Islands.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 21, 1927

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

277
32

No. 573

GREGORIO AGONCILLO, BALDOMERO ROXAS AND CATALINO LAVADIA, PETITIONERS,

vs.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

PETITION FOR CERTIORARI FILED OCTOBER 1, 1927

CERTIORARI GRANTED NOVEMBER 21, 1927

(33,025)

(33,025)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 573

GREGORIO AGONCILLO, BALDOMERO ROXAS AND CATALINO LAVADIA, PETITIONERS,

vs.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

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564, 573.

1 Voting of Pharm. is an executive function. The Legislature, may not within the scope of its authority, dispense the Governor from use of that power.

2. The members of the Bd of Control Exercise executive functions. Legislature may not appoint to or remove members to perform such duty.

3 - The line between Executive & Legislative functions should be drawn. The Opening of a Door or ~~window~~ Windows would lead to danger and of the wise rule demanding the Three departments.

The United States of America

PHILIPPINE ISLANDS

In the Supreme Court of the Philippine Islands

G. R. No. 27225

QUO WARRANTO

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
Plaintiff,

VERSUS

GREGORIO AGONCILLO, BALDOMERO ROXAS AND CATALINO LAVADIA,
Defendants.

(ORIGINAL JURISDICTION)

BE IT REMEMBERED that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case:

On the 24th day of January, 1927, the plaintiff, through its attorneys, filed in the office of the clerk of the Supreme Court, the following complaint:

(CAPTION AND TITLE OMITTED)
COMPLAINT

Now comes the plaintiff in the above-entitled cause and for its cause of action against the defendants herein avers:

I

The Philippine National Bank is a banking corporation organized and existing under and by virtue

of the provisions of Act 2612 of the Philippine Legislature, as amended by Acts 2747 and 2938 thereof, and the Corporation Law of the Philippine Islands.

II

By Section 3 of Act 2612 it is provided that the authorized capital of the Philippine National Bank should be ₱20,000,000.00 divided into 200,000 shares of the par value of ₱100.00 each.

III

By Section 4 of Act 2612 it was provided that the Government of the Philippine Islands should purchase with public funds, at par, 101,000 shares of the stock of the Philippine National Bank.

IV

By Section 5 of Act 2612 it was also provided:

> "That the voting power of all stock purchased directly by the Philippine Government as an investment from the general funds of the Government, and the voting power of all stock purchased for the benefit of the insurance fund, of the public works bonds sinking fund, and of the friar lands bonds sinking fund, shall be vested exclusively in the Governor-General."

V

Pursuant to the authority of Act 2612 the Government of the Philippine Islands purchased and became the registered owner of the majority of the shares of the stock of the Philippine National Bank.

VI

By Section 1 of Act 2747 the provisions of Section 5 of Act 2612 relating to the voting of the stock owned by the Government of the Philippine Islands in the Philippine National Bank were amended to read as follows, to wit:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

VII

Thereafter, by Act 2938 of the Philippine Legislature the authorized capital stock of the Philippine National Bank was increased to ₱50,000,000.00, and the Philippine Government was authorized to purchase shares of the stock of the Bank to the aggregate number of 153,000; and the provisions relating to the exercise of the voting power of the stock owned and controlled by the Goverment of the Philippine Islands in the Philippine National Bank were further amended to read as follows:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

VIII

On November 10, 1926, the Governor-General of the Philippine Islands, by Executive Order No. 37, due notice of the contents of which was given to the President of the Senate and the Speaker of the House of Representatives of the Philippine Legislature, declared that on account of the invalidity of that part of the various acts of the Philippine Legislature creating the voting committees or Boards of Control to deal with the interest of the Government of the Philippine Islands as the holder of shares in private corporations, the Governor-General would thereafter exercise exclusively the duties and powers theretofore assumed by such Boards of Control or voting committees which the Legislature had so attempted to create.

IX

The Board of Directors of the Philippine National Bank consists of nine members elected by the shareholders thereof.

X

On the 23rd day of December, 1926, Mr. A. Gideon, one of the members of the Board of Directors of the Philippine National Bank resigned his office.

XI

At the next meeting of the Board of Directors of the Philippine National Bank a motion duly seconded was made by one of the members thereof that a special meeting of the shareholders of the Bank be

called for the purpose of electing a director to fill the vacancy caused by the resignation of Director A. Gideon. Action on this motion was deferred until the meeting of the Directors of the Philippine National Bank held December 28th, 1926, at which meeting the motion was defeated.

XII

Thereupon a written demand for a special meeting was presented to the President and the Secretary of the Board of Directors of the Philippine National Bank by His Excellency, Leonard Wood, Governor-General of the Philippine Islands, asserting the right to do so on behalf of the Government of the Philippine Islands as a shareholder of the Philippine National Bank, and five private shareholders of the Bank, which said demand is in words and figures as follows, to wit:

"Manila, P. I.,
December 28, 1926.

To the President, Directors
and Secretary of the Philippine National Bank, Manila, P. I.

Gentlemen:

Pursuant to the provisions of Section 34 of the Corporation Law (Act 1459) demand is hereby respectfully made by the undersigned shareholders, the registered owners of more than eighty (80) per centum of the outstanding shares of the stock of this corporation entitled to be voted, that a special meeting of

the shareholders be called, to be held at three o'clock p. m., of the 17th day of January, 1927, at the office of the corporation, Masonic Temple Building, Escolta, Manila, P. I., for the purpose of voting upon the removal of Messrs. Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo from their offices as directors and the election at the same time and place, of other qualified persons to fill the vacancies created, if the said directors or either of them shall be removed from office at said special meeting; and for the purpose of filling the vacancy now existing due to the resignation of Director Gideon; and for the further purpose of considering the advisability of the repeal of Section Fifty-one (51) of the By-laws.

You are hereby required to give or cause to be given to each of the shareholders of this corporation notice of the time, place and purposes of the said special meeting, such notice to be given in the manner prescribed by Section 44 of the By-laws and by Section 29 of the Corporation Law.

You will please take notice that in the event of your failure or refusal to take the action hereby requested, within forty-eight hours from the delivery of this demand, such special meeting will be called and notice thereof given by one or more of the undersigned shareholders, pursuant to the provisions of Section 34 of the Corporation Law.

Shareholders	*Number of shares owned*
The Government of the Philippine Islands By (Sgd.) Leonard Wood, Governor-General	97,332

(Sgd.) F. C. Fisher	5
(Sgd.) H. L. Heath	1
(Sgd.) J. L. Headington	1
(Sgd.) J. R. Wilson	1
(Sgd.) John Gordon	1"

XIII

Upon receiving the written demand set forth in the paragraph next preceding the President of the Philippine National Bank communicated it to the Board of Directors at their meeting of December 28th, 1926. Whereupon, after the reading of the said demand, one of the directors moved that a special meeting of the shareholders be held in accordance therewith, which motion was duly seconded. After discussion a vote was taken upon the said motion, upon which four of the eight directors then present voted "yes" and three directors then present voted "no". The President of the Philippine National Bank, who is also a member of the Board of Directors, did not vote, but announced that the motion to call a special meeting in accordance with the said petition had been carried, four members voting in favor and three against.

XIV

Thereupon the Secretary of the Bank, acting upon the written instructions of the President, sent printed notices of the time, place and purpose of the said special meeting to each and every shareholder of the said Bank at his last known place of residence, which said notice was sent at the time and in

the manner prescribed by Section 44 of the by-laws of the said Bank and Section 29 of the Corporation Law, which said printed notice is in words and figures as follows, to wit:

"PHILIPPINE NATIONAL BANK
NOTICE OF SPECIAL MEETING
OF THE SHAREHOLDERS

To the Shareholders of the Philippine National Bank:

A request having been filed by the Governor-General, purporting to have been made by him on behalf of the Government of the Philipine Islands, as the owner of 97,332 shares of the stock of this corporation, and by five other shareholders holding (9) shares that a special meeting of the stockholders be held for the following purposes:

(a) To remove Directors Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo;

(b) To elect directors to fill the vacancies created by such removals, if made;

(c) To elect a director to fill the vacancy created by the resignation of Director A. Gideon; and

(d) To consider the advisability of repealing Section 51 of the By-laws;

and this request purporting to have been made on behalf of stockholders holding more than two-thirds of the outstanding shares entitled to vote, the Board of Directors, by resolution adopted at a meeting held the 28th day of Dec-

ember, 1926, have resolved to convene a special meeting of the shareholders of this corporation, for the purposes above mentioned, to be held at the principal office of the Philippine National Bank, Masonic Temple Building, Escolta, Manila, Philippine Islands, at three o'clock p. m., January 17th, 1927; of which meeting notice is hereby given pursuant to the provisions of the Corporation Law and the By-Laws of the Philippine National Bank.

Manila, December 28, 1926.

(Sgd.) LEON ANCHETA,
Secretary."

XV

In addition to sending printed notices of the call of the said special meeting to each of the shareholders of the Bank, as averred in the paragraph next preceding, the Secretary of the Philippine National Bank caused the said notice as above set forth to be published for one week in two newspapers of general circulation published in the City of Manila —one printed in the English language and one printed in the Spanish language.

XVI

At the time for which the said special meeting was called, to wit, three o'clock p. m., of the 17th day of January, 1927, there were outstanding 100,000 shares of the capital stock of the Philippine National Bank, of which 97,332 shares were owned by and were registered on the books of the corporation in the name of the Government of the Philip-

pine Islands (all of which said shares were purchased directly by the Philippine Government, as an investment, from the general funds of the Government), and 2,668 shares were owned by and registered in the name of private persons.

XVII

The meeting was called to order by the President of the corporation at the time and place designated in the call and notice, and the roll of stockholders was read by the Secretary, whereupon it appeared from the responses of the persons in attendance that there were present in person or by duly authorized proxies 26 private persons owning or representing the owners of 94 of the outstanding shares of the capital stock of the Philippine National Bank, and His Excellency, Leonard Wood, Governor-General of the Philippine Islands, asserting the right to be present on behalf of the Government of the Philippine Islands and to be vested with the exclusive right and power to vote at said meeting the 97,332 shares of the stock of the Philippine National Bank owned by the Government of the Philippine Islands.

XVIII

Neither the President of the Philippine Senate nor the Speaker of the House of Representatives of the Philippine Legislature was present at the said meeting.

XIX

After the roll was called a letter addressed to the President of the Philippine National Bank by the President of the Senate and the Speaker of the House of Representatives was read at the meeting, in which letter protest was made against the holding of the meeting upon the grounds therein set forth, as more fully appears from a copy of said letter incorporated into the minutes of the meeting, a copy of which said minutes is hereunto attached, marked Exhibit "A". After the reading of said letter of the President of the Senate and the Speaker of the House of Representatives, one of the stockholders present raised the question of the lack of a quorum. Whereupon the President ruled, against the objection of His Excellency, the Governor-General, that the authority to vote the shares of the stock of the Philippine National Bank owned by the Philippine Government, is vested exclusively in the Board of Control established by the Charter of the Bank, as amended, and as provided in the by-laws of said Bank, and that said Board not being at the meeting, there was no quorum. Thereupon the President, notwithstanding the protest of the Governor-General against his said ruling, declared the meeting adjourned, and thereupon left the room accompanied by the Secretary and some other stockholders, all of which more fully appears from the minutes of the said meeting, up to the time of the withdrawal of the President, as correctly kept by the Secretary of the Bank, a

copy of which minutes marked Exhibit "A" is hereunto attached.

XX

Immediately after the President declared the meeting adjourned he left the room, accompanied by the Secretary, and some other stockholders; but His Excellency, the Governor-General, and twenty other persons, the owners or representatives of owners of shares of stock of the Philippine National Bank, remained in the place in which they had assembled pursuant to the call and immediately organized by the election of a Chairman *pro tempore* and a Secretary *pro tempore*, and proceeded with the transaction of the business for which the meeting had been called.

XXI

On motion duly seconded it was resolved to repeal Section 51 of the by-laws of the Philippine National Bank, of which by-laws a copy is hereunto attached, marked Exhibit "B" and made a part hereof. The vote upon this resolution was held by written ballots. Including the 97,332 votes cast by the Governor-General of the Philippine Islands, 97,413 votes were cast in favor of the repeal of Section 51 of the said by-laws, and no votes were cast against such repeal, whereupon the Chairman *pro tempore* declared that the resolution had been carried, and that the by-laws had been amended by the repeal of Section 51 thereof.

XXII

Thereupon, upon motion duly seconded, it was resolved that Messrs. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia be removed from their offices as members of the Board of Directors of the Philippine National Bank. The vote upon this resolution was held by written ballots. 97,411 votes were cast in favor of the adoption of the resolution for the removal of the said directors, including the 97,332 votes cast on behalf of the Government of the Philippine Islands by the Governor-General, and no votes were cast against the resolution, which was declared by the Chairman *pro tempore* to have been duly adopted.

XXIII

Thereupon, upon motion of His Excellency, the Governor-General of the Philippine Islands, seconded by one of the shareholders present, Messrs. Leon M. Heras, Manuel Yriarte, John Gordon and A. Gideon, shareholders of the Philippine National Bank who are neither directors nor employees of any other bank were placed in nomination for election to fill the vacancies on the Board of Directors created by the resignation of Director A. Gideon and by the removal of Directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia. There being no further nominations the persons present proceeded to vote by written ballots. Including the 97,332 votes cast by the Governor-General on behalf of the Government of the Philippine Islands, 97,405 votes were

cast for the election of L. M. Heras; 97,409 for the election of Manuel Yriarte; 97,410 for the election of John Gordon; and 97,410 for the election of A. Gideon. Whereupon the Chairman *pro tempore*, after a canvass of the votes so cast, declared that the said Leon M. Heras, Manuel Yriarte, John Gordon and A. Gideon had each been elected to the office of director of the Philippine National Bank.

XXIV

The proceedings taken at the said special meeting of the shareholders of the Philippine National Bank, after the withdrawal of the President and the Secretary of the Bank, as above averred, were as recorded in the minutes of the said meeting, signed by the Chairman *pro tempore* and the Secretary *pro tempore*, a copy of which said minutes marked Exhibit "C" is hereunto attached and made a part hereof.

XXV

Thereafter, the said L. M. Heras resigned the office of director to which he had been declared elected, as averred.

XXVI

Thereafter, to wit, the 21st day of January, 1927, a regular meeting of the Board of Directors of the Philippine National Bank was held at the offices of the corporation in the City of Manila, at which meeting the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia were pres-

ent, as were also the five uncontested members of the said board.

XXVII

After the said meeting of the Board of Directors was called to order Messrs. Manuel Yriarte, John Gordon and A. Gideon presented themselves at the place of meeting, and submitted to the President of the Bank their certificates of election issued to them by the Secretary *pro tempore* at the meeting of the shareholders held January 17th, 1927, as averred, and then and there severally made demand that they be permitted to participate in the said meeting as members-elect of the Board of Directors of the Philippine National Bank, and that the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, and each of them withdraw from the said meeting, and thereafter cease to exercise or to attempt to exercise any of the duties and powers inherent in the office of directors of the Philippine National Bank.

XXVIII

Upon the demand so made by the said Manuel Yriarte, John Gordon and A. Gideon, the President of the Bank presiding at said directors' meeting stated that he declined to recognize their right to membership in said board, and the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia and each of them did then and there refuse to surrender the offices of directors of the Philippine National Bank or to recognize the right there-

to of the said Manuel Yriarte, John Gordon and A. Gideon; and the said defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia thereafter continued to participate in the transaction of the business of said meeting, and to exercise the functions of directors of the Philippine National Bank.

XXIX

That each and every one of said defendants, namely, Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia has, since the 17th day of January, 1927, usurped, intruded into and unlawfully exercised the office of Director of the Philippine National Bank and does now, and unless ousted therefrom will continue to usurp, intrude into and unlawfully exercise such office, and to exclude therefrom the rightful incumbents, to wit, Manuel Yriarte, John Gordon and A. Gideon who, by virtue of their due election thereto as herein averred, and their acceptance of such offices, claim to be entitled and are entitled, to the offices so usurped, intruded into and unlawfully exercised by the said defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia.

XXX

That the Hon. Manuel L. Quezon and the Hon. Manuel Roxas are members of the Philippine Legislature and are respectively the President of the Senate and the Speaker of the House of Representatives thereof; that the Hon. Manuel L. Quezon has

been the President of the Senate continuously since October, 1916; that the Hon. Manuel Roxas was elected a Representative in the year 1922 and Speaker of the House of Representatives in October, 1922, and has held such offices of Representative and Speaker of the House of Representatives continuously since said date.

WHEREFORE, the plaintiff prays that judgment be rendered that the defendants herein and each of them, to wit, Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia are not entitled to membership in the Board of Directors of the Philippine National Bank, and that they and each of them be ousted and altogether excluded from the said offices and perpetually enjoined from exercising any of the powers inherent therein; and that the said Manuel Yriarte, John Gordon and A. Gideon be inducted into the said offices; and that plaintiff recover its proper costs.

Manila, P. I., January 24, 1927.

(Sgd.) DELFIN JARANILLA,
Attorney-General of the
Philippine Islands.

(Sgd.) F. C. FISHER,
(Sgd.) HUGH C. SMITH,
Special Counsel
for the Plaintiff.

EXHIBIT A

Stockholders Minutes Jan. 17, 1927

MINUTES OF THE SPECIAL MEETING OF STOCKHOLDERS OF THE PHILIPPINE NATIONAL BANK HELD ON JANUARY 17, 1927, AT ITS OFFICES ON THE ESCOLTA, MANILA.

The President called the meeting to order at 3:00 o'clock p. m. and instructed the Secretary to call the roll.

The Secretary reported that there are outstanding 100,000 shares of stock of the Philippine National Bank under Act No. 3174 of the Philippine Legislature. Of these, 97,332 shares are owned by the Government of the Philippine Islands and 2,668 shares, by private stockholders, according to the Bank's stock ledgers. The following private stockholders were present in person:

Stockholder	*No. of Shares*
Delfin Jaranilla	1
A. G. Escamilla	2
Miguel Romualdez	1
C. M. Cotterman	1
John R. Wilson	1
L. M. Heras	5
Halstead Dorey	1
H. L. Heath	1
A. Gideon	1
Carried forward	14

Stockholder	*No. of Shares*
Brought forward	14
Serapion Valle Cruz	1
F. C. Fisher	1
R. R. Ely	1
John Gordon	1
Manuel de Yriarte	1
C. W. Franks	1
Vicente T. Fernandez	1
Hugh C. Smith	1
Rafael Corpus	1
Mateo Herrera	2
Geronimo Santiago	1
J. P. Heilbronn	8
Total	34

The following stockholders were represented by proxy:

Stockholder	*No. of Shares*	*Proxy*
Concepcion Velasco	4	Antonio M. Opisso
Albina Tuason	1	—do—
Emilio Aguinaldo	1	Romarico Agcaoili
Emilio Aguinaldo	1	A. G. Escamilla
Corporación de P. P. Benedictinos	31	Miguel Romualdez
Ong Jan Chuan	13	—do—
Victor Buencamino	7	Mauricio Cruz
Salvador Laguda	1	Ceferino J. de Ortega
Catalino Lavadia	1	Jose Yulo
Total	60	

The Secretary further reported that His Excellency, Leonard Wood, Governor-General of the Phil-

ippine Islands, was present and claimed in his capacity of Governor-General of the Philippines exclusive representation of the 97,332 shares of stock owned by the Government of the Philippine Islands.

The Chair announced that he has received a communication from the Honorable Manuel L. Quezon, President of the Senate, and the Honorable Manuel Roxas, Speaker of the House of Representatives, and forthwith instructed the Secretary to read same before the meeting.

The Secretary read the letter in full which is as follows:

"January 17, 1927.

Hon. Rafael Corpus,
President,
Philippine National Bank,
Manila.

Sir:

Having received notice of a special meeting of the stockholders of the Philippine National Bank appearing to have been issued by the Secretary of said Bank upon the authority of a resolution alleged to have been adopted at a meeting of the Board of Directors on December 28, 1926, we hereby strongly protest against the holding of such meeting,

FIRST, Because there exists at present no valid or lawful reason for the removal of directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, or either of them, or for the amendment of Section 51 of the By-Laws of the Bank and we know that the petition for the calling of this meeting was

presented for the sole purpose of affording the parties signing the said petition an opportunity at this time to raise the issue, as regards the Bank, of the validity of the law creating the Board of Control, when there is now pending before the Supreme Court of the Philippine Islands an action wherein a similar question will necessarily be determined;

SECOND, Because the petition for the calling of such meeting purporting to be made on behalf of the Government of the Philippine Islands as the holder of more than 80% of the stock of the Bank is signed only by the Governor-General asserting sole representation of said stock, when the charter and the by-laws of said Bank exclusively confer such representation upon the Board of Control of which we are members, and, therefore, such petition, in so far as the stock of the Government of the Philippine Islands is concerned, is absolutely without legal force and effect, and should not have been acted upon by the Board of Directors;

THIRD, Because the alleged resolution of the Board of Directors authorizing the calling of such special meeting received the favorable vote of only four members of said Board out of eight members who were present at the meeting, and Section 55 of the by-laws of the Bank provides that 'a majority of the members in attendance at any Board meeting shall decide its action,' consequently the alleged resolution authorizing the calling of this meeting is a nullity; and

FOURTH, Because the call for the meeting is issued under no legal authority as required by Section 43 of the by-laws of the Bank, and therefore no meeting should be held thereunder.

You are therefore requested to refrain from holding any meeting of stockholders under the call above mentioned, and you are hereby notified that the undersigned will contest the validity of any action taken of such meeting, should you insist in holding the same in spite of this protest.

Respectfully,

(Sgd.) MANUEL L. QUEZON,
President of the Senate.
Member, Board of Control.

(Sgd.) MANUEL ROXAS,
Speaker, House of Representatives.
Member, Board of Control."

The Chair also announced that he has just received a communication from Paredes, Buencamino & Yulo, Attorneys for Sergio Osmeña, Esperanza Limjap and the Estate of Estefania de Osmeña, and instructed the Secretary to read same before the meeting. Said letter which was read by the Secretary in full is attached hereto and made a part of these minutes.

Mr. Geronimo Santiago raised the question of quorum and asked the President to determine whether there was quorum or not.

Justice Fisher stated that before the meeting proceeds further he would like to be heard regard-

ing the communication of President Quezon and Speaker Roxas, he (Justice Fisher) being one of the signers of the petition for the calling of a special meeting.

Regarding the first ground of the protest, Justice Fisher said that the removal of directors of a corporation is a question that the stockholders themselves decide; that the Corporation Law does not require that specific statement of the grounds for the removal of directors should be made; that the position of a director of a corporation is similar to that of a party holding a power-of-attorney for another party and such power-of-attorney may be withdrawn by the party giving it at the latter's pleasure; that while it is true that there is pending in the Supreme Court an issue regarding the validity of the Board of Control, that fact is of no importance in this connection. It does not prevent any stockholder from exercising his rights as such.

As to the second ground of the protest, regarding the claim of the Governor-General for exclusive representation of the Government stock in the Bank, Justice Fisher said it raised the direct question of the validity of the Board of Control which is a matter for the courts to decide.

As to the third point, Justice Fisher called attention to certain well known precedents supporting the legality of the resolution of the Board calling for this special meeting. He cited the case of a corporation's board of directors in which four members

attended a meeting. In a matter where two of the members voted favorably and one against and the Chairman announced the resolution carried, the courts held that the resolution was in order as it implied that the President was in favor of the resolution. He therefore believed that the allegation contained in the protest that the resolution calling for a special meeting was a nullity cannot be sustained. Furthermore even if there had been no resolution whatever, Justice Fisher said that the Corporation Law authorized stockholders holding at least one-half (1/2) of the shares entitled to be voted, to call a special meeting for the purpose of removing directors and no action on the part of the Board of Directors is required in such circumstances.

As to the fourth ground, Justice Fisher said it did not need comment as it is similar to the third.

As to the letter of Paredes, Buencamino & Yulo, Justice Fisher said the grounds of protest are similar to those contained in the comunication of President Quezon and Speaker Roxas.

Mr. Geronimo Santiago rose for a point of order stating that before discussing any matter like the protest of President Quezon and Speaker Roxas, the President should first determine whether there is a quorum or not.

Mr. Romarico Agcaoili said that the mere fact that the call for a special meeting was issued by the President showed that he recognizes the right of the Governor-General to vote the stock of the Govern-

ment and moved that the letter of protest be set aside. Mayor Miguel Romualdez seconded the motion.

The Chair explained that the meeting has not yet entered into a discussion of business; that he will presently decide the question of whether there is a quorum or not. He said he just wanted the stockholders to have opportunity to express their opinion whether or not there existed a quorum; and so, as a matter of fairness, he let Justice Fisher to give his points of view on the questions raised by the letters above referred to, since these questions, or one of them at least affect the question of quorum just raised by Mr. Santiago.

Mr. Agcaoili said it was unfair for the President to declare a lack of quorum as if he does not recognize the Governor-General to vote the Government shares of stock he could have said so before this time and saved the stockholders, who are here, the trouble of coming to the meeting. Mr. Agcaoili insisted on his motion that the letter of protest be filed and that the meeting starts the consideration of its business.

Col. Hugh C. Smith seconded the motion of Mr. Agcaoili but said that he did not subscribe to the remarks of Mr. Agcaoili as same are unfair to the President.

The Chairman ruled Mr. Agcaoili out of order; then ruled as follows:

> Section 4 of Act No. 2938, which constitutes the corporate charter of this Bank, pro-

vides that the voting power of all the stock of this Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board known as the Board of Control, composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. Section 47 of the By-Laws of the Bank, duly approved by the Board of Directors and by the Board of Control, and acted upon by the stockholders of the Bank for several years, also provides that the voting power of all the stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the Board of Control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. It is my understanding that at the present time, there is pending before the Supreme Court of the Philippine Islands a case wherein the validity of a similar provision in a charter of another corporation has been placed in issue; it is not our purpose to anticipate the decision in this case. Until the decision in that case is rendered, or until that particular provision of the Charter and By-Laws is repealed or otherwise amended, it is the duty of this Bank as a corporation to strictly abide by its corporate Charter and its By-Laws. Otherwise, the Bank will incur a breach of that Charter, and furthermore violate the rights of the minority stockholders.

For this reason, I am of the opinion that the stock of the Government of the Philippine Islands can only be counted as duly represented in this meeting, if the Board of Control referred to in its corporate Charter and

its By-Laws appears before this meeting as representing said stock.

Thereupon, the Chairman adjourned the meeting for lack of quorum.

Justice Fisher said that he protested in his behalf and that of the Governor-General to the President's ruling that there is no quorum present. He insisted that there is a quorum because the Board of Directors by majority vote called for this special meeting at the instance of the petitioners. He said that if the Chairman believed there was no quorum that he should vacate the Chair.

The Chairman said that he would not vacate the Chair but would adjourn the meeting and thereupon announced the meeting adjourned for lack of a quorum.

(Sgd.) LEON ANCHETA,
Secretary.

APPROVED:

(Sgd.) R. CORPUS,
Chairman.

EXHIBIT B

BY-LAWS

OF THE

PHILIPPINE NATIONAL BANK

ARTICLE I.—CAPITAL.

Shares: first issue: second issue: par value.

Section 1. The capital stock of the Philippine National Bank shall be fifty million pesos (₱50,000,000.00), Philippine currency, divided into two hundred thousand (200,000) shares called of the first issue and three hundred thousand (300,000) shares called of the second issue. Shares of the first issue are those which are issued in accordance with the provisions of Act No. 2612, and shares of the second issue are those, the issue of which, is authorized by Act No. 2738. Each of the shares of both the first and second issue shall have the par value of one hundred pesos (₱100.00), Philippine currency.

Stock to be sold to the Government of the Philippine Islands: Disposition of stock not subscribed for after June 30, 1921.

Section 2. All the unissued shares of stock of the first issue, and such portion of those of the second issue as will make the aggregate number of not less than one hundred and fifty-three thousand

(153,000), shall be sold at par value to the Government of the Philippine Islands, and the remaining shares may be offered to the provincial and municipal governments, or to the public, at a price, not below par, which the Board of Directors shall from time to time determine: Provided, That the Government of the Philippine Islands, upon agreement with the Board of Directors of the Bank, may, at any time after June thirtieth (30th), nineteen hundred and twenty-one (1921) purchase all or part of the stock on hand at a price not below par.

Government always to own majority stock in the Bank.

Section 3. At no time shall shares be sold to the public if, as a result thereof, the part of the capital stock held by private investors will equal or exceed the part owned by the Government of the Philippine Islands.

Payment of stock subscribed for.

Section 4. Shares of stock of the second issue subscribed for before June 30, 1921, shall be paid either in full, or as follows:

Sixty per centum (60%) of the value at the time of the subscription;

Ten per centum (10%) on or before January thirty-first, nineteen hundred and twenty-two;

Ten per centum (10%) on or before January thirty-first, nineteen hundred and twenty-three;

Ten per centum (10%) on or before January thirty-first, nineteen hundred and twenty-four; and the remaining;

Ten per centum (10%) on or before January thirty-first, nineteen hundred and twenty-five.

Shares subscribed after June thirtieth (30th), nineteen hundred and twenty-five (1925), shall be paid in the form and manner prescribed by the Board of Directors of the Bank.

ARTICLE II—CERTIFICATE OF STOCK.

Certificates: form of certificates of partially paid stock: assignment: form of certificates of fully paid stock: assignment.

Section 5. Certificates of shares shall be engraved, and shall clearly set forth:

(a) The part of the value paid up, or the fact that the stock is fully paid.

(b) The form and conditions under which subsequent payment shall be made, as well as the penalty to be incurred in case of delinquency.

The certificates of ownership of partially paid shares issued shall be in the following form:

No..... .....Shares

PHILIPPINE NATIONAL BANK

MANILA, P. I.

OFFICIAL DEPOSITORY OF THE PHILIPPINE GOVERNMENT CREATED BY ACT NO. 2612, PHILIPPINE LEGISLATURE, AS AMENDED BY ACTS NOS. 2747 AND 2938.

PARTLY PAID STOCK.

This is to certify that.....
who is subscriber for..... shares

of One Hundred Pesos, Philippine Currency, each, of the capital stock of the Philippine National Bank, has paid on account of his said subscription ₱60.00 per share. Upon payment of the remaining installments of said subscription, and surrender of this certificate, accompanied by evidence that the remaining installments have been paid, duly executed stock certificates for said..... shares will be issued to the said..... or his assignee.

The payment of subsequent installments shall be made to the Cashier of the Bank, who will issue receipts referring by number to this stock certificate. Delinquency in the payment of such installments shall deprive the holder of this certificate of the right to vote during the period of delinquency. Further, the overdue installments shall bear interest at the rate of ten per centum per annum from the date of delinquency: Provided, That upon failure to pay an installment within one year after the same shall become due, proceedings shall be instituted in the manner provided in sections 38 to 49, inclusive, of Act No. 1459, dealing with failures of stockholders to respond to class for unpaid subscriptions and assessment of stock.

Issued ....., 1921.

.....
President.

Attest:

.....
Secretary.

On the back of the certificate the following shall appear:

ASSIGNMENT OF CERTIFICATE.

For value received, I hereby sell, assign and transfer to..... all my rights, title and interests in and to the shares of stock referred to in the within certificate, together with the payment of..... ..... pesos made thereon by me, and I do hereby authorize and direct the proper officers of the Philippine National Bank, upon full payment for said shares, under the terms of my subscription, to issue a certificate for the said stock to the said..... .....

.....
Signature of Subscriber.

Witnesses:

.....
.....

The certificates of ownership of fully paid shares shall be in the following form:

No. ....Shares

PHILIPPINE NATIONAL BANK
MANILA, P. I.

This is to certify that .... is the owner of .... fully paid shares of the Philippine National Bank, Manila, P. I., a corporation created by

Act No. 2612 of the Philippine Legislature, as amended by Acts Nos. 2747 and 2938.

Issued ....., 192....

.....
President.

Attest:

.....
Secretary.

On the back of the certificate the following shall appear:

ASSIGNMENT OF CERTIFICATE.

For value received, I hereby sell, assign and transfer to ..... all my rights, title, and interests in and to the shares of stock referred to in this certificate, and I do hereby authorize and direct the proper officers of the Philippine National Bank to issue a certificate for said stock to the said .....

.....
Signature.

Witnesses:

.....

.....

Other requirements in the Certificate: data to be entered in the stubs of the stock book.

Section 6. Certificates of shares shall be numbered, bear the signatures of the President and of

the Secretary, and the seal of the Bank, and shall be issued in numerical order from the stock certificate book.

Date necessary to identify each certificate issued shall be entered upon the corresponding retained stub in the stock book.

Manner of transferring certificates of stock: stock transfer book.

Section 7. Transfers of stock certificates shall be made by filling in the form on the back of each certificate. Such transfers shall be recorded in a book kept for this purpose by the Bank. The certificates transferred shall be canceled and attached to their respective stubs, and new certificates shall be issued to the transferees. The stock transfer book shall be kept at the main office of the Bank in the city of Manila, and shall be open to inspection by any stockholder of the Bank at any time during office hours.

Issue of a new certificate to replace one lost or mutilated.

Section 8. The Board of Directors may order a new certificate issued to replace any certificate of shares alleged to have been lost or mutilated; but the owner of the certificate so lost or mutilated shall furnish a bond to the Bank in such sum as the Board of Directors may require, but which shall, in no case, be less than the par value of the certificate lost or mutilated, to secure the Bank against any loss or claim resulting from the issuance of the new

certificate; and, when the Board of Directors deems it necessary, the intention to issue such new certificate shall be published in a daily newspaper of the city of Manila, for a period of fourteen days, at the expense of the owner of the certificate so lost or mutilated.

ARTICLE III—DOMICILE.

Section 9. The Philippine National Bank shall be domiciled in the city of Manila, Philippine Islands.

ARTICLE IV—TRANSACTIONS OF THE BANK IN GENERAL.

Section 10. The Philippine National Bank may engage in the following operations:

1st. Agricultural loans.
2nd. Issue of first mortgage real estate bonds.
3rd. Exchange and other banking operations.
4th. Issue of circulating notes.
5th. Other loans as provided by law.

ARTICLE V—AGRICULTURAL LOANS.

Limit: securities must be approved by the Attorney for the Bank.

Section 11. For the purpose of promoting agriculture the Philippine National Bank may make loans on promissory notes secured by real estate mortgages, in an aggregate sum, which at no time shall exceed sixty per centum (60%) of its capital and surplus and all amounts realized from the sale of real estate bonds as provided in section thirteen

(13) of these By-Laws. Provided, That no loan shall be made on the security of a mortgage on real estate, the title to which, is considered defective, questionable or insufficient by the Attorney for the Bank.

Terms and conditions.

Section 12. The Philippine National Bank shall make agricultural loans only upon the following terms and conditions:

(a) Every such loan shall be evidenced by a note secured by a first mortgage on real estate duly registered in the Philippine Islands.

(b) The due date of said mortgage shall not be less than one (1) year after the date of its execution, nor more than ten (10) years.

(c) When the due date of the mortgage is five (5) years or more after the date of its execution, the principal and interest of the loan shall be made payable by its terms in equal installments of not more than one (1) year each. When the due date of the mortgage is less than five (5) years after the date of its execution, the principal and interest of the loan shall be made payable by its terms, at one time or in installments, in the discretion of the Board of Directors of the Bank.

(d) Such loans shall be made only for the following purposes:

1st. For the improvement, cultivation and development of farm lands.

2nd. To provide for the purchase of the equip-

ment and live stock reasonably necessary for the improvement, cultivation, and development of farm lands, the term "equipment" to be defined by the Board of Directors of the Bank.

3rd. To liquidate indebtedness incurred for the improvement, cultivation, and development of farm lands.

4th. To assist in the purchase of farm lands.

(e) The amount of the loan must not exceed sixty per centum (60%) of the actual value of the land and improvement mortgaged, the appraisal to be made in accordance with the following rules:

1st. The appraisal shall be made by an agent of the Bank in accordance with the rules and regulations laid down by the Board of Directors.

2nd. When permanent improvements, such as buildings and machinery, are offered as security together with the farm land, and they form an integral part of the agricultural development, said buildings and machinery shall be appraised as a part of such farm land, and the mortgage shall contain a clause obligating the mortgagor to insure them to their full value in the name of the National Bank.

(f) Applications for such loans shall be made in writing, and under oath, on the forms prescribed by the Board of Directors. The applications shall contain, among other things:

1. A detailed description of the real estate, and the improvements thereon, if any, offered as security;

2. An appraisal of such lands and the improvements thereon, if any, at their reasonable market value;

3. A full statement of the purpose for which the loan is desired;

4. Assessed valuation for the last five (5) years;

5. Annual earnings for the same period.

6. Encumbrances.

(g) The mortgage shall contain a clause wherein the mortgagor binds himself to furnish all documentary stamps necessary for the transaction, to pay all fees for the registration of the documents connected with it, and to pay all lawful taxes and assessments on the mortgaged property.

(h) The mortgagor shall also bind himself not to use the proceeds of the loan, or any part thereof, for any purpose or purposes except the purpose or purposes set out in his application, and shall state that any violation of this condition shall be sufficient cause for the rescission of the contract and the foreclosure of the mortgage.

ARTICLE VI—ISSUE OF FIRST MORTGAGE REAL ESTATE BONDS.

Amount: conditions: redemption.

Section 13. The Philippine National Bank may issue real estate bonds in any sum not to exceed ninety per centum (90%) of the amount of agricultural loans held by it under section eleven (11) and

section twelve (12) of these By-Laws. Said bonds shall be engraved, signed by the President of the Bank, and authenticated by the Insular Auditor, and shall bind the Bank to pay the bearer of the bond on the date therein named, the principal sum mentioned in said bond, with interest payable semi-annually, at the rate fixed by the Board of Directors. Said bond shall be payable, both principal and interest, in gold coin of the United States: Provided, however, That bonds held by persons or corporations residing in the Philippine Islands, shall be payable in lawful money of the Philippine Islands, or in gold coin of the United States, at the option of the Bank.

The real estate securities against which bonds are issued shall be deposited with the Treasurer of the Philippine Islands, and each of said bonds shall bear on its face a certificate of the Insular Treasurer in words and figures as follows:

> "I hereby certify that there are on deposit in the Treasury of the Philippine Islands first mortgage real estate securities in the sum of one hundred eleven and one-ninth per cent (111-1/9%) covering real estate of an appraised value of one hundred eighty-five and five twenty-seventh per cent (185-5/27%) of the face value of this bond; which said real estate securities or other first mortgage real estate securities of equal value or the proceeds thereof are to be held by me as security, additional to the promise of the Philippine Na-

tional Bank for the prompt payment of this bond, principal and interest.

. . . . . .

Treasurer of the Philippine Islands."

Such bonds shall also state the fact that by Act of the Philippine Legislature "they shall be receivable by the Insurance Commissioner under section one hundred and seventy-eight of Act Numbered Twenty-four hundred and twenty-seven," and "by way of security in all customs and internal revenue transactions where security is required, and in any and all cases where by statute security may be required in dealings with the Government" and "they shall be exempt from any and all taxes levied or assessed by the Government of the Philippine Islands, or any department, division or subdivision thereof."

Said bonds shall be issued in such amounts and form, at such times, and for such periods, as may be expressly provided by resolution of the Board of Directors. They shall be redeemable at par on or before the date of their maturity, and shall contain a provision to the effect that they are subject to redemption by lot at such date as the Board of Directors of the Bank may designate: Provided, however, That such of the bonds so chosen by lot for redemption as have not been outstanding for at least three-fourths (¾) of the period for which issued shall be retired with a premium of five per centum (5%) of the par value thereof. The bonds so cho-

sen for redemption shall cease to bear interest beginning with the date set for their withdrawal, and the aforesaid selection by lot shall take place at least one hundred (100) days before the date of the withdrawal: And provided further, That the serial numbers of the bonds so selected shall be published for a period of not less than three (3) months in two (2) daily newspapers of general circulation in the Philippine Islands, and by notification of the Bureau of Insular Affairs at least three (3) months before said redemption.

ARTICLE VII—EXCHANGE AND OTHER BANKING OPERATIONS.

Section 14. The Philippine National Bank may engage in the following operations:

Deposits.

(a) Receive deposits of funds of the Insular Government, the provinces, municipalities, Postal Savings Bank associations, corporations, and private persons.

Purchase and discount of negotiable instruments.

(b) Purchase or discount promissory notes, drafts, and bills of exchange, issued or drawn for agricultural, industrial or commercial purposes, or the proceeds of which have been used or are to be used for such purposes, when supported by securities approved by the Board of Directors or the General Manager, as the case may be.

Loans and discounts on harvested and stored crops.

(c) Make loans on, or discount notes secured by, harvested and stored crops: Provided, That no loan on the security of such harvested and stored crops shall exceed seventy per centum (70%) of the market value thereof on the date of the loan: Provided further, That the crops so mortgaged shall be insured by the mortgagor for the benefit of the National Bank for their entire market value: And provided, finally, That if, owing to any circumstance whatever, the value of the crops given as security shall diminish, the mortgagor shall be bound to furnish additional security, or refund such part of the loan as the Bank may deem necessary. Such loans shall be granted for a period of three (3) months, subject to three (3) months' extension, in the discretion of the Bank.

Loans on standing crops.

(d) Make loans to agriculturists in installments, on standing crops of the natural products of the Philippine Islands, such as rice, hemp, copra, sugar, tobacco, corn, maguey, etc., not in excess of three-fifths (3/5) of the estimated value of such crops: Provided, however, That before granting such loans, the Bank may require additional security in the nature of mortgages on real estate duly registered in the name of the debtor, or chattel mortgages, including those upon live-stock, machinery, and agricultural implements, or personal bonds

with sufficient surety or sureties, satisfactory to the Bank.

Loans to government entities.

(e) Make loans to the several provincial and municipal governments, and to any other branch, or subdivision of the Government of the Philippine Islands, on promissory notes guaranteed by the Central Government, as shown by the endorsement thereon of the Secretary of Finance, approved by the Governor-General of the Philippine Islands.

Purchase and sale of negotiable instruments.

(f) Purchase and sell in the open market paper of all kinds eligible for discount from or to domestic or foreign banks, firms, companies, corporations, or individuals.

Collection of negotiable instruments.

(g) Collect drafts and other current negotiable instruments.

Trust funds.

(h) Receive and care for funds or deposits in trust.

Safe deposit.

(i) Receive and hold in trust gold and silver bullion, and valuables, stocks, bonds, and other securities issued by corporations.

Negotiation of drafts.

(j) Negotiate and draw domestic and foreign bills of exchange.

Purchase and sale of gold and silver.

(k) Purchase and sell gold and silver, in coin or bullion.

Loans on documentary bills of exchange.

(l) Make loans on export bills of lading, when approved invoices and insurance policies are attached thereto. Provided, That such loans shall not exceed seventy per centum (70%) of the market value of the merchandise; but this subsection shall not be understood as prohibiting the Bank from purchasing documentary bills of exchange at their full value when the Bank is in possession of indubitable proof that the merchandise has been sold.

Loans on vessels.

(m) Make loans for not more than one (1) year upon vessels fully insured and free from encumbrance, such loans not to exceed one-half (½) of the appraised value of the vessels.

Advances in general.

(n) Make advances, or discount paper, for agricultural, manufacturing, industrial or commercial purposes; Provided, That loans, discounts or advances made under this paragraph shall have maturities not exceeding one (1) year, renewable from year to year, in the discretion of the Board of Directors. And provided further, That the loans, discounts, or advances shall not exceed seventy per cent (70%) of the market value of the securities support-

ing such loans, discounts, or advances *when such securities consist of stocks, bonds, warehouse receipts, or other personal property, and 60% when they consist of real property* on the date on which the loan, discount or advance is made.

Purchase and sale of securities on commission.

(o) Purchase and sell securities on commission under the regulations established by the Board of Directors.

Government agencies.

(p) Act as agents of the Insular, provincial, municipal and city governments in commercial, financial and industrial transactions.

Acceptance of commercial bills of exchange.

(q) Accept commercial bills of exchange running for not more than six (6) months.

Dollar exchange.

(r) Receive at par United States Treasury notes, United States National Bank notes, United States gold certificates, United States silver certificates, Federal Reserve Bank notes, and Federal Reserve notes, in exchange for Philippine currency, and pay out United States Treasury notes, United States National Bank notes, United States gold certificates, United States silver certificates, Federal Reserve Bank notes, and Federal Reserve notes, in exchange for lawful currency of the Philippine Islands, at the request of the Insular Government, whenever the

said Government shall provide funds necessary therefor.

Purchase and sale of first mortgages upon farm lands.

(s) Purchase and sell first mortgages upon farm lands in the Philippine Islands, subject to such rules and regulations as may, from time to time, be promulgated by the Board of Directors.

Purchase and sale of first mortgage real estate bonds issued by the Bank.

(t) Purchase and sell first mortgage real estate bonds issued by the Bank.

Purchase and sale of government bonds.

(u) Buy and sell United States bonds, or bonds issued by the Government of the Philippine Islands or by any department, division or subdivision thereof, or bonds endorsed, or guaranteed by said Government of the Philippine Islands, or by any department, division or subdivision thereof.

Savings accounts.

(v) Provide facilities for the safe investment of the savings of the people of the Philippine Islands.

All other acts.

(w) Perform any other banking function not incompatible with the provisions of Act No. 1459 and Act No. 2612 as amended by Acts Nos. 2747 and 2938.

ARTICLE VIII—CIRCULATING NOTES.

Denominations: size and legend.

Section 15. Circulating notes may be issued by the Philippine National Bank in the denominations of one (P1), two (P2), five (P5), ten (P10), twenty (P20), fifty (P50), one hundred (P100), two hundred (P200) and five hundred (P500) pesos, and such circulating notes shall be of the same size as the notes of the Philippine Government, and shall bear the following legend:

> (On the face): Philippine National Bank Circulating Note—Issued under the provisions of Act Numbered 2612 as amended by the provisions of Acts Nos. 2747 and 2938 of the Philippine Legislature—(Number) series of ..... —The Philippine National Bank will pay the bearer on demand—Pesos in lawful currency of the Philippine Islands—(Seal) Manila, P. I. (date)—(Number) series of..... (Signature) Cashier—(Signature) President.
>
> (On the back):.....Pesos—Philippine National Bank Circulating Note—This note is receivable by the Philippine Government in payment of all taxes, dues, or other claims due or owing to said Government and is exempt from all taxes.

Amount of circulating notes which may be issued: against the Bank's capital and surplus: against gold coin held by the Bank.

Section 16. Circulating notes may be issued in amounts not exceeding the paid-up capital and sur-

plus of the Bank, plus the amount of gold coin of the United States owned and held by it in its own vaults, or to its order in the Treasury of the Philippine Islands, or of the United States, or in solvent National Banks of the United States, or in any Federal Reserve Bank.

Issue of emergency circulating notes under Act No. 2938.

In cases of emergency, and subject to the approval of the Board of Control, the Secretary of Finance may authorize the Philippine National Bank to rediscount commercial paper of not over six (6) months maturity, secured by exports or imports, and the Philippine National Bank may issue against said commercial paper circulating notes for sums not to exceed seventy-five per centum (75%) of the value thereof.

Issue of emergency circulating notes under Act No. 2924.

Whenever in his judgment the needs of commerce and the public interest require an increased monetary circulation, the Secretary of Finance, with the approval of the Council of State, may authorize the Philippine National Bank to issue notes, in an amount in excess of the limit provided in this section, upon depositing with the Insular Treasurer bonds of the Government of the United States, or of the Government of the Philippine Islands, or commercial paper secured by warehouse receipts for

principal products of the Philippine Islands, acceptable to the Secretary of Finance. Such securities shall be endorsed, and legally transferred to the Insular Teasurer, as representative of the Government of the Philippine Islands, who shall safely keep the same, and who shall, upon the order of the Secretary of Finance, take possession of the same, and realize them, in order to use the proceeds of their sale for the redemption of the notes issued, in case the Bank should fail to redeem the same, or otherwise fail to comply with the conditions imposed by the Secretary of Finance in accordance with the provisions of Act No. 2924. The total issue of notes by virtue of this paragraph shall never exceed the par value of the bonds, nor seventy per centum (70%) of the market value of the products covered by the warehouse receipts, as the Secretary of Finance may determine. In case the market value of the securities deposited as guarantee for the notes issued shall depreciate to such an extent that such securities shall be insufficient to cover the amount of the outstanding notes, the Bank shall deposit additional securities, or legal currency, or shall restrict its circulation.

Reserve for notes issued against the Bank's capital and surplus: reserve for notes issued against rediscounted paper: redemption of, and reserve for, notes issued under Act No. 2924: securities for the redemption of circulating notes.

Section 17. The Philippine National Bank shall hold, at all times, either in its vaults, or in the

Treasury of the Philippine Islands, in lawful money of the Philippine Islands, at least twenty-five per centum (25%) of the value of the circulating notes issued against its capital and surplus.

Whenever the Philippine National Bank issues circulating notes against rediscounted commercial paper, it shall deposit as a reserve for their redemption, in the vaults of the Insular Treasury, in lawful currency of the Philippine Islands, twenty-five per centum (25%) of said issue.

The notes issued under the provisions of Act No. 2924 shall be redeemed upon the sale of the securities or goods involved in the guarantee, or within a period to be fixed by the Secretary of Finance. For this purpose, it shall be sufficient for the Bank to deposit with the Insular Treasurer legal money in an amount equal to that of the outstanding notes, in substitution for the securities deposited as original guarantee. As a reserve for the redemption of these notes, the Bank shall retain, in lawful money of the Philippine Islands twenty-five per centum (25%) of the issue, as follows: twenty per centum (20%) in its own vaults or in the Treasury of the Philippine Islands, and the remaining five per centum (5%) must be deposited with the Insular Treasury.

All the securities described in section fourteen (14), paragraph "b" of these By-Laws, and the proceeds thereof, shall be held and kept for the payment and redemption of the circulating notes issued by

the bank against its capital and surplus, and the emergency circulating notes issued by the Bank against rediscounted paper.

In case the Philippine National Bank issues circulating notes against gold coin owned and held by it in its own vaults, or to its order in the Treasury of the Philippine Islands or of the United States, or in any solvent National Banks of the United States, or in any Federal Reserve Bank, such gold coin shall be kept and held by the Bank and used for no other purpose, except the redemption of the circulating notes so issued. The Bank, however, shall have the privilege of redeeming said circulating notes in any lawful money of the Philippine Islands.

Privileges of Philippine National Bank circulating notes. Place of redemption.

Section 18. Section 14 of Act No. 2938 provides that all circulating notes issued by the Philippine National Bank shall be receivable by the Philippine Government in payment of all taxes, dues or other claims due or owing to said Government, and shall be redeemed by the Bank, on demand, in lawful money of the Philippine Islands, at the Central Office in Manila.

ARTICLE IX—OTHER POWERS AND PRIVILEGES GRANTED TO THE BANK.

Right to hold and dispose of real estate.

Section 19. The Philippine National Bank may purchase and own such real estate as may be necessary for the purpose of carrying on its business. It shall have, also, the right to hold such real estate as it may find necessary to acquire in the collection of debts due to it or to its branches; but the real estate so acquired shall be held by the Bank for one (1) year from the time of its purchase subject to the mortgagor's right of redemption and, after that time has elapsed, the Bank must sell the property so acquired within four (4) years.

Right to erect bonded warehouses.

Section 20. The Philippine National Bank may erect bonded warehouses for depositing therein the goods given to it in pledge, in any provincial capital, or in any municipality, where the commercial movement, or the industrial or agricultural importance of the place may require it.

Guaranty of bonds issued by manufacturing corporations.

Section 21. The Philippine National Bank may guaranty, both as to principal and interest, or either, bonds issued by duly incorporated companies for the erection of and addition or additions to, industrial plants or manufacturies principally used for the manufacture and preparation of the products of the

Philippine Islands: Provided, however, That such guaranty shall only be lawful when approved by the Board of Control.

Purchase of bonds issued by manufacturing corporations.

Section 22. Subject to the same approval, the Philippine National Bank may purchase bonds issued by any duly incorporated company engaged in the manufacture or preparation of products of the Philippine Islands. Such bonds shall be secured by a first mortgage, or deed of trust, on the property of the company. The face value of the bonds issued and secured by such mortgage, or deed of trust, shall not exceed sixty per centum (60%) of the fair value of the property securing the bonds. The property serving as security for the bonds shall consist of the land, buildings, machinery and equipment of such company in the Philippine Islands.

Purchase of shares in American Banks: incorporation of branches in foreign countries.

Section 23. The Philippine National Bank may invest a sum, not exceeding ten per centum (10%) of its paid up capital, in the purchase of shares of stock of any banking corporation constituted under the laws of any State of the United States, and hold the same: Provided, however, That, subject to resolution of the Board of Directors and the approval of the Board of Control, it may incorporate any of its foreign agencies, now or hereafter established, un-

der the laws of the country or state where the same may be located, and may retain the stock of such corporation as an investment.

Sale of personal property pledged or mortgaged to the Bank.

Section 24. If, from any cause whatsoever, any of the securities accepted by the Bank as security for loans or discounts decline, or depreciate in market value, in part or as a whole, or, on nonperformance of any promise made in order to obtain the loan or discount, or regarding bills of exchange, notes, and checks, the Bank may demand additional securities or may forthwith declare any such obligation due and payable, and upon three (3) days' notice if practicable, or without such notice, if otherwise, demand, sell, assign, transfer, and deliver the whole of said securities, or any part thereof, or any substitutes therefor, or any additions thereto, or any other securities or property given unto or left in the possession of, or thereafter given unto, or left in the possession of the Bank for safekeeping or otherwise, at any brokers' board or at public or private sale, at the option of the Bank, without either demand, advertisement, or notice of any kind, and at such sale, if public, the Bank may itself purchase the whole or any part of the property sold, free from any right of redemption on the part of the mortgagor or pledgor. In case of sale for any cause, after deducting all costs or expenses of any kind, for collection, sale or delivery, the Bank may apply

the residue of the proceeds of the sale so made, to pay one or more or any or all of the said liabilities to the Bank, as its General Manager shall deem proper, whether then due or not due, making proper rebate for interest on liabilities not then due, returning the overplus, if any, to the mortgagor or pledgor, who shall remain liable to and pay to the Bank for any deficiency arising upon such sale or sales.

If the proceeds of the sale of securities held as collateral for loans by the Bank do not cover the full amount of the loan, together with interest and other charges thereon, the Bank may proceed against the debtor for the difference, but any amount exceeding the full indebtedness to the Bank shall be paid to the debtor.

The Bank depository of the Government funds in the Philippine Islands.

Section 25. Section 15 of Act No. 2938 provides that the Philippine National Bank shall be the depository in the Philippine Islands of all funds belonging to the Government of the Philippine Islands and all the provincial and municipal governments.

ARTICLE X—GOVERNMENT INSPECTION, AND OTHER REGULATIONS PROVIDED FOR THE SAFETY OF BANKING OPERATIONS.

Inspection by the Insular Treasurer.

Section 26. The National Bank shall be sub-

ject to inspection by the Insular Treasurer with regard to its solvency in the manner provided by law.

Prohibitions to officers of the law to divulge the Bank's secrets.

Section 27. The Insular Treasurer, and Auditor, or other officers designated by law to inspect or investigate the condition of the Bank, shall not reveal to any person other than the Governor-General, the Secretary of Finance and the Board of Directors, the details of the inspection or investigation, nor shall they give any information relative to the funds in its custody, its current accounts or deposits belonging to private individuals, corporations, or any other entity, except by order of a court of competent jurisdiction.

Prohibition to certain Government officials to own shares in the Bank or to be indebted to it.

Section 28. The Secretary of Finance, the Insular Treasurer, the Insular Auditor, and the latter's representative, the chief of the Auditing Department of the Bank, are hereby prohibited from owning stock in the National Bank, or from becoming indebted to said National Bank, directly or indirectly, in any sum.

Prohibition to grant loans to directors, officers and employees: conditions in granting loans to corpo-

rations, partnerships or companies where a member of the Board has any interest.

Section 29. The Philippine National Bank shall not, directly or indirectly, grant loans to any of the members of its Board of Directors, or to its General Manager, or to its Assistant General Manager, or to any of its officers and employees in the Central Office or in its branches, and no loan shall be granted to any corporation, partnership, or company wherein any of the members of the Board of Directors is a shareholder, or agent or is employed in any capacity whatsoever, except by the unanimous consent of the Board, excluding the member interested. Provided, That the total obligations to the Bank, of any corporation, partnership or company wherein any of the members of the Board of Directors is a shareholder, or agent, or is employed in any capacity whatsoever, shall, at no time, exceed ten per centum (10%) of the capital and surplus of the Bank.

Prohibition to grant loans without first requiring proper securities: mortgages to be registered: margin of securities.

Section 30. Before granting any loan, discount or advance of funds, the Board of Directors of the Philippine National Bank shall require definite security in written form to protect such loan, discount, or advance of funds. Said security shall be kept by the official duly appointed, and in case it be in the form of a mortgage it shall be recorded with the Registrar of Deeds of the city, province, or munici-

pality where the property is situated. The margin of such security over and above of loan, discount or advance of funds, shall at all times be thirty per centum (30%) over and above its market value; however, documentary bills of exchange may be discounted at their full value, whenever the Bank is in possession of indubitable proof that the goods have been sold.

Prohibition to grant loans on Bank's own shares.

Section 31. The Philippine National Bank shall not make any loan, discount or advance of money on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall, within six (6) months from the time of its purchase, be sold or disposed of at public or private sale.

Limitation of loans that may be granted to any one person, company, firm or corporation. The term "loan" defined.

Section 32. The total liabilities to the Bank of any person, or of any company, corporation, or firm for money borrowed, including in the liabilities of the company or firm, the liabilities of the several members thereof, shall at no time exceed ten per centum of the capital stock of such Bank actually paid in and unimpaired and ten per cent of its un-

impaired surplus fund: Provided, however, that the total of such liabilities shall in no event exceed thirty per centum of the capital stock of the Bank; but the discount of bills of exchange drawn in good faith against actually existing values and the discount of commercial or business paper, actually owned by the person negotiating the same shall not be considered as money borrowed.

The term "loan" whenever used in these By-Laws shall include "overdraft" and the restrictions contained in this Article, shall apply to all loans of whatever nature, secured either wholly or partly by a real estate mortgage.

No commission shall be exacted, demanded or paid, for obtaining loans.

Section 33. No fee or charge of any kind by way of commission shall be exacted, demanded or paid, for obtaining loans, and any officer, employee or agent of the Bank exacting, demanding, or receiving any fee for service in obtaining a loan or for use of his influence to obtain a loan, shall be punished as provided in section thirty-six (36) of these By-Laws.

Cash on hand: prohibition to make any new loan whenever the cash on hand is below the amount required: authority to suspend the provisions in this section: daily report on the cash on hand.

Section 34. The Philippine National Bank shall at all times, keep on hand in its vaults or with the

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Treasury of the Philippine Islands, a sum in lawful money either of the Philippine Islands or of the United States, which shall be computed as follows:

Twenty-five per centum (25%) of the circulating notes outstanding, not covered by gold coin, as provided in section seventeen (17) of these By-Laws.

Twenty per centum (20%) of the demand deposits outstanding and credited on its books, and of the fixed deposits maturing within thirty (30) days; except funds as are on deposits with solvent banks in the United States and collateraled by securities approved by the Insular Treasurer, or in solvent banks approved by the Insular Treasurer: Provided, That if the National Bank shall have funds subject to check with National Banks or Federal Reserve Banks of the United States, such funds may be considered as constituting a part of the twenty per centum (20%) specified in this section, up to a sum, to be fixed, from time to time, by the Secretary of Finance, with the approval of the Governor-General.

Whenever the lawful money kept by the Bank in all its vaults, or with the Treasury of the Philippine Islands, as required in this section, shall be below the amount herein prescribed, the Bank shall not diminish the amount of such lawful money by making any new loans or discounts until the required proportion between the aggregate amount of its deposits and circulating notes and its lawful money has been restored: Provided, however, That the Se-

cretary of Finance, at the request of the Board of Directors of the Bank, duly approved by the Board of Control, whenever in his judgment the general interests of the country require it, shall be authorized to suspend, for such period as may be necessary, the requirement of maintaining the proportion of the reserve specified in this section and in section seventeen (17) of these By-Laws. The Bank shall make a daily report showing the condition of its reserve as required in this section, and the amount thereof and place where kept.

Prohibition to withdraw capital in the form of dividends or otherwise.

Section 35. The Bank shall not, during the time it shall continue its banking operation, withdraw, or permit to be withdrawn, either in the form of dividends, or otherwise, any portion of its capital.

Penalties for the violation of the provisions of the Bank's charter.

Section 36. Section 43 of Act. No. 2938 provides: "Any member of the Board of Directors of the National Bank who knowingly violates or knowingly permits any of the officers, agents, or servants of the Bank to violate any of the provisions of this Act, and any officer, employee, agent, or servant of the Bank who violates any of the provisions of this Act, and any person aiding and abetting the violation of any of the provisions of this Act, shall be punished by a fine not to exceed ten thousand pesos, or

by imprisonment not to exceed five years or by both such fine and imprisonment."

ARTICLE XI—DISPOSITION OF NET PROFITS

Creation and maintenance of the legal reserve: net profits how ascertained: bad debts defined.

Section 37. The Philippine National Bank shall, semiannually, set aside, for the creation and maintenance of the legal reserve, fifty per centum (50%) of its net profits, which shall be ascertained by deducting from the gross profits the administration expenses, the losses sustained, and bad debts. All debts due to the Bank on which interest is past due and unpaid for a period of six (6) months, unless they are well secured, and in process of collection, shall be considered bad debts within the meaning of this section.

Distribution of dividends: limitation to the dividends that may be declared: when dividends cannot be declared.

Section 38. The remaining fifty per centum (50%) of the net profits shall be distributed by the Board of Directors among the stockholders in the form of dividends: Provided, however, That the dividends so distributed shall not exceed in any calendar year, twelve per centum (12%) of the paid up capital and legal reserve: And Provided further, That no dividends shall be declared whenever the cash on hand, required in section thirty-four (34)

of these By-Laws to be kept by the Bank, is below the amount therein prescribed.

Undivided profits.

Section 39. In case there is a surplus after the necessary provision has been made for the legal reserve and dividends as provided in the two preceding sections, such surplus shall be transferred to the account of undivided profits.

ARTICLE XII—STOCKHOLDERS.

Powers

Section 40. The stokholders at any regularly called meeting shall have the following powers:

(a) To select the nine elective directors of the Bank,

(b) To act on recommendations made by the Board of Directors or any stockholder, and

(c) To exercise any powers not expressly conferred upon the Board of Directors or any executive officer of the Bank, and not in conflict with the charter of the Bank, or with the Corporation Law.

Annual meeting of stockholders: election of Directors: report of the Board of Directors.

Section 41. The annual meeting of stockholders shall be held at the office of the Bank in the city of Manila at four (4) o'clock in the afternoon of the first Tuesday after the first Monday in March of each year, unless the same be a legal holiday, in

which case it shall be held on the day next following.

At such annual meetings the nine elective directors for the current year shall be selected in accordance with the provisions of sections thirty-one (31) and thirty-two (32) of the Corporation Law.

The Board of Directors shall present their annual report at such meetings.

List of stockholders.

Section 42. Fifteen (15) days before any annual meeting of stockholders, the Secretary shall prepare an alphabetical list of all the stockholders, setting forth the number of shares held by each, as appears in the stock ledger of the Bank.

Special meeting of stockholders.

Section 43. Special meetings of stockholders may be held at any time at the office of the Bank, upon resolution of the Board of Directors, or at the request of stockholders owning one-third (1/3) of all the stock of the Bank.

Calls for special meetings shall be issued fifteen (15) days in advance and shall specify the time, place, and object of the meeting, and no business other than that specified in the call shall be transacted at such meeting.

Notice of meetings: When purpose of the meeting must be stated in the notice.

Section 44. The Secretary of the Board shall

mail notices of each annual or special meeting to each stockholder and in addition shall publish notice of the intention to hold such meeting, for one (1) week, in two (2) local newspapers, one published in English and the other in Spanish, in the city of Manila. Whenever it is desired to amend or repeal any by-laws, or adopt new by-laws at a regular or special meeting, such purpose shall be stated in the notice.

Validity of proceedings in the meeting.

Section 45. The proceedings and the business transacted at any meeting of the stockholders shall be valid even if the meeting be improperly held or called, provided stockholders owning a majority of the stock are present or represented.

Right to vote: proxies.

Section 46. Each stockholder, or his authorized proxy shall be entitled to as many votes as there were shares registered in his name on the 31st day of January last preceding, and owned by him on the date of election. The manner of voting shall be in accordance with the Corporation Law.

Proxies shall be filed in the office of the Secretary at least five (5) days before the day set for the holding of the stockholders' meeting and such proxies shall not be recognized or accepted unless granted within the six (6) months next preceding the date on which said meeting is held.

Stock owned by the Government of the Philippine Islands. Board of Control.

Section 47. The voting power of all stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the "Board of Control" composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

President and Secretary of the meeting.

Section 48. The President and Secretary of the Board shall be ex-officio chairman and secretary, respectively, of all meetings of stockholders.

ARTICLE XIII—DIRECTORS.

Number.

Section 49. The Board of Directors of the Bank shall be nine (9) in number, and shall be elected by the stockholders in accordance with the provisions of the Corporation Law.

Qualifications.

Section 50. No person shall qualify, nor shall be competent to act as Director of the Bank unless he is, at the time of election, and while he holds such office, the holder of record of at least one (1) share of its stock. Provided, That no Director or employee of any other bank shall be eligible as member of the Board of Directors of the Philippine National Bank.

Vacancies.

Section 51. Any vacancy in the Board of Directors may, with the approval of the Board of Control, be filled for the unexpired term by a majority vote of the remaining members. In the event of the membership of the Board falling below the number necessary for a quorum, a special meeting of the stockholders shall be called, and such number of directors shall be elected thereat as may be necessary to restore the membership of the Board to its full number.

Regular meetings.

Section 52. Regular meetings of the Board of Directors shall be held weekly in the office of the Bank in the City of Manila at such hour and day as the Board of Directors may select.

Special meetings.

Section 53. Special meetings of the Board of Directors may be held at any time in the office of the Bank in the city of Manila as hereinafter provided. Special meetings may be held at any time and place, and without notice, by unanimous consent of the members of the Board.

Notice of meetings.

Section 54. The Secretary shall notify in writing each member of the Board of all regular or special meetings, at least three (3) hours before any such meetings. No failure to give notice, or any

irregularity at any regular meeting, shall invalidate the same, or any proceeding thereat. In case of special meetings, the object thereof, need not be stated in the notice.

Quorum.

Section 55. A majority of the Board of Directors shall constitute a quorum, and a majority of the members in attendance at any Board meeting shall decide its action. A minority of the Board present at any regular or special meeting may, in the absence of a quorum, adjourn to a later date, but may not transact any business until a quorum has been secured.

Election of officers.

Section 56. Immediately after their election, the directors of the Bank must organize by the election of a President and one Vice-President, who must be from among their number, and the appointment of a Secretary who shall be a resident of the Philippine Islands and a citizen of the Philippine Islands or of the United States, and such other officers as they deem necessary.

Compensation of Directors.

Section 57. Each Director shall receive the sum of thirty pesos (₱30.00) as compensation for his attendance at any regular or special meeting of the Board of Directors: Provided, That whenever the President or Vice-President, by order of the Board of Directors, shall temporarily or permanently per-

form duties incumbent upon other officers or employees of the Bank, they shall be granted additional compensation; but the resolution of the Board of Directors shall not take effect until the written approval of the members of the Board of Control, has been obtained.

Power to pass by-laws.

Section 58. The Board of Directors shall have no power to amend, alter, or repeal these By-Laws, but may pass such additional by-laws in conformity therewith as may be necessary or convenient to facilitate the business of the Bank.

Executive committee.

Section 59. The President and two (2) members of the Board of Directors, to be elected at a regular or special meeting called for that purpose, shall constitute an Executive Committee which shall be a part of the permanent executive organization of the Bank, and shall, in the interim between meetings of the Board of Directors, perform such duties as the latter may confer upon it in accordance with law.

The Executive Committee shall regularly meet at such hour and day as it may determine. Special meetings may be held on call of the President or of the two (2) other members of the Committee. All of the members of the Committee must be duly notified of the meetings, and the President and one (1) of the two (2) members of the Committee shall constitute a quorum. Provided, That in case of tie

in the votes of the Committee, the vote of the President shall control. The Executive Committee shall keep due record of all meetings and actions and shall report all such meetings and actions at the next regular or special meeting of the Board.

Other Committees.

Section 60. The Board of Directors may also create such other committees as may be necessary with such powers as the Board may determine at the time of their creation, and the President shall appoint the members of such committee or committees. The meetings of all permanent committees shall be considered as sessions of the Board of Directors for the purpose of fixing the per diems of its members.

Order of business.

Section 61. The regular order of business at meetings of the Board of Directors shall be as follows:

1. Reading and disposal of any unapproved minutes.
2. Report of officers and committees.
3. Unfinished business.
4. New business.
5. Adjournment.

Powers and duties of the Board of Directors.

Section 62. The duties and powers of the Board of Directors shall be:

(a) To prescribe the manner of issuance and transfer of stock certificates.

(b) To determine, from time to time, the number and amount of circulating notes to be issued and put into circulation in accordance with the provisions of the charter of the Bank and these By-Laws, and the retirement of such issues of notes from circulation.

(c) To determine, from time to time, the number and amount of the mortgage bonds to be issued and sold in accordance with the provisions of the charter of the Bank and these By-Laws.

(d) To fix, from time to time, the rate of interest for loans and discounts, and make public announcement of the same at the head office.

(e) To authorize the establishment of branch banks or agencies in the United States and in other countries, at such points as may be determined upon by the Board. To establish branches in provincial capitals and in municipalities of the Philippine Islands, at such points as the Board may select. To define the powers and duties of all officers in all the branches either domestic or foreign.

(f) Upon the recommendation of the General Manager, to appoint, with the authorization of the proper Department first had, provincial or municipal treasurers as agents, cashier, or tellers of such branch banks as may be established in provincial capital and municipalities.

(g) With the approval of the Secretary of Jus-

tice, to employ attorneys in addition to the said Secretary of Justice.

(h) Upon the recommendation of the General Manager, to appoint and remove all such officers and employees whose appointment and removal are among the powers granted by law to the Board.

(i) To fix the amount of the bonds to be furnished by the officers and employees of the Bank.

(j) To enforce strict compliance with these By-Laws, and all regulations, orders, and resolutions.

(k) To examine and consider, at its meetings, the operations of the Bank.

(l) To prepare, with the aid of the General Manager, reports of the operations of the Bank.

(m) To examine and review the accounts, the general balance sheet, profit and loss statements, and, in general, all matters pertaining to operations of the Bank, and to approve the budget for the Bank.

(n) To fix, in accordance with the charter of the Bank, the dividends to be distributed to the stockholders.

(o) To receive and act upon all suggestions made by the General Manager of the Bank.

(p) To recommend to the stockholders, at any meeting, such measures as may be deemed desirable.

(q) To prescribe such rules and regulations as may be necessary for the proper operation of the Bank, and not in conflict with the charter of the Bank, the Corporation Law, or these By-Laws.

(r) To declare due and payable to the Bank

the unpaid subscription value of the shares by means of a resolution setting forth (1) percentage of the stock unpaid and due, and (2) the date on which delinquency shall commence.

Notice of such resolution shall be sent at least thirty (30) days in advance of the date on which the delinquency will begin.

ARTICLE XIV—OFFICERS.

Enumeration: President, Vice-President, Secretary, General Manager, Assistant General Manager, Cashier, Attorney, and Auditor: other officers.

Section 63. The officers of the Bank shall be the President, Vice-President, Secretary, General Manager, Assistant General Manager, Cashier, Attorney, Auditor, and such other executive officers as may be necessary.

The President, Vice-President, and Secretary shall be elected by the Board of Directors immediately after its organization, and shall hold office for the term of one (1) year, and until their respective successors are duly elected and qualified. The President and Vice-President shall be elected from among the members of the Board of Directors.

The President: duties and powers.

Section 64. The powers of the President shall be:

(a) To call the meetings of stockholders.

(b) To convene the Board of Directors whenever he may deem it necessary, either on his own

initiative, or upon the request of the General Manager, or of two (2) members of the Board.

(c) To preside as chairman over all the meetings of the stockholders, or of the Board of Directors.

(d) To sign stock certificates, real estate mortgage bonds and circulating notes: Provided, That when deemed advisable by the Board of Directors, such circulating notes and real estate bonds may bear the signature of the President engraved thereon.

(e) And, to perform all other functions assigned to him by law or by the Board of Directors.

The Vice-President: duties and powers: absence, disability or refusal to act of both the President and the Vice-President.

Section 65. The Vice-President shall familiarize himself with the affairs of the Bank, and in the absence, disability or refusal to act of the President shall possess all the powers and perform all the duties of that officer.

In case of the absence, inability, or refusal to act of both the President and the Vice-President, the member selected by the Board of Directors shall substitute the President in all his powers, obligations, duties, rights and functions.

The Secretary: his duties.

Section 66. There shall be a Secretary who shall be elected by the Board of Directors immediately after its organization or as soon thereafter as

may be convenient. The duties of the Secretary shall be as follows:

(a) To keep a book of minutes of the stockholders' meetings.

(b) To keep a book of minutes of the Board of Directors' meetings.

(c) To issue, at the direction of the President, all calls for stockholders' and directors' meetings.

(d) To have charge and custody of the seal of the Bank.

(e) To attest the signature of the President on the stock certificates.

(f) To attest, when necessary, all documents of the Bank.

(g) To keep the stock ledger and stock transfer books.

(h) To prepare, within the time limit established by these By-Laws, a complete alphabetical list of the stockholders entitled to vote, which list shall set forth the number of shares and votes of each. This list shall be open to inspection by any stockholder at the main office of the Bank until the annual meeting of the stockholders.

(i) To permit any stockholder, during office hours, to inspect the stock ledger and the stock certificate transfer book of the Bank.

(j) And to perform such other duties as the Board of Directors may direct.

The General Manager: powers and duties.

Section 67. The General Manager shall be ap-

pointed, either by contract or otherwise, by the Board of Directors with the advice and consent of the Board of Control, and may be removed in like manner. He shall be the chief executive of the Bank and shall receive an annual salary to be fixed by the Board of Directors, with the approval of the Board of Control.

The powers and duties of the General Manager shall be:

(a) To attend all the meetings of the Board of Directors and of its various committees, unless excused by the Board.

(b) To direct the operations of the Bank, in conformity with the resolutions, orders and regulations of the Board of Directors and in accordance with the provisions of the Bank's charter.

(c) To make, with the advice and consent of the Board of Directors, all contracts, on behalf of the Bank, and to enter into all necessary obligations by the charter of the Bank and these By-Laws required or permitted.

(d) To propose to the Board of Directors action with respect to operations not provided for in these By-Laws.

(e) To recommend to the Board of Directors the appointment and removal of all subordinate officers and employees of the Bank.

(f) To report weekly to the Board of Directors the operations of the Bank during the preceding week, and oftener, if required.

(g) To recommend to the Board of Directors changes in rates of discount, exchange, or of policy.

(h) To make loans on commercial paper for periods of time not to exceed four (4) months, and in sums not exceeding fifty thousand pesos (₱50,000.00), to any one person, company, corporation or firm, and submit a report on each such loan to the Board of Directors at its next succeeding meeting.

(i) To verify and approve the monthly balance sheet.

(j) To prepare all reports requested by the Board of Directors.

(k) To keep the Assistant General Manager informed, so far as may be, of all operations of the Bank, so that he may act instead of the General Manager in case of the absence or disability of the latter.

(l) To exercise all other powers of general supervision and administration usually attached to the office of the General Manager, or that may be prescribed by the Board.

(m) To submit to the Board of Directors within the first fifteen (15) days of January of each year a statement of net profits, and a detailed statement of expenditures of the Bank pertaining to the preceding year, and an estimate of the expenditures, including the purchase of equipment, for the ensuing year.

(n) And to perform all other duties or functions assigned to him by law.

Assistant General Manager: his powers and duties.

Section 68. The Assistant General Manager shall assist the General Manager and act in his stead in case of absence, inability, or refusal to act. He shall upon the recommendation of the General Manager, be appointed by the Board of Directors at a salary to be fixed by said Board, with the advice and consent of the Board of Control, and may be removed in like manner.

Cashier: powers and duties.

Section 69. The duties of the Cashier shall be as follows:

(a) To have in his custody and be responsible for all the funds and securities of the Bank.

(b) To keep a complete and correct account, on the books of the Bank, of its transactions, its accounts, obligations, and financial condition.

(c) To disburse such funds as may be necessary for the transactions of the Bank on order of the General Manager; such disbursement to be supported by properly accomplished receipts and vouchers.

(d) To sign all circulating notes and interest coupons in first mortgage real estate bond issued by the Bank: Provided, That when the Board of Directors deems it advisable such circulating notes or first mortgage real estate bonds and their interest

coupons may bear the signature of the Cashier engraved thereon.

(e) And to perform all such other duties and functions as may be assigned to him by the General Manager.

Attorney: Secretary of Justice ex-officio Attorney for the Bank: Additional attorneys.

Section 70. The Secretary of Justice shall be the Attorney for the Bank but whenever he deems it proper in a specific case, said officer may delegate his duties to the Attorney-General or Solicitor-General, the Fiscal of the City of Manila or any Provincial Fiscal. The Board of Directors, with the approval of the Secretary of Justice, shall have the power to employ such additional attorneys as may be necessary.

Auditor: Auditing Department of the Bank controlled by the Insular Auditor.

Section 71. The Insular Auditor shall be ex-officio Auditor of the National Bank, and shall, with the advice and consent of the Board of Control, appoint a representative who shall be chief of the Auditing Department of the Bank, all the other employees of the Auditing Department of the Bank, shall be appointed by the Insular Auditor, who, with the approval of the Board of Control, shall fix the salaries of the same as well as that of his representative, the chief of the Department. The operating expenses of the Department and the salaries and

traveling expenses of the employees thereof shall be payable by the Bank, and the Board of Directors shall make the necessary appropriation therefor. The representative of the Insular Auditor shall make a quarterly report on the condition of the Bank to the Governor-General of the Philippine Islands, through the Secretary of Finance, to the Board of Control, to the Insular Auditor, and to the Board of Directors of said Bank. The report shall contain among other things, a statement of resources and liabilities, including earnings and expenses, the account of capital stock, dividends paid, surplus reserve, and suspended and overdue paper carried in the Bank's assets, as of the day on which the statements are compiled.

Other officers.

Section 72. Upon the recommendation of the General Manager, the Board of Directors may appoint such other officers as may be necessary.

ARTICLE XV—BRANCHES OR AGENCIES.

Where established.

Section 73. Branches or agencies of the Bank may be established in the United tSates and in other countries and in provincial capitals and municipalities of the Philippine Islands, at such points as the Board of Directors may select.

Powers and functions of branches in the United States.

Section 74. The branches or agencies in the United States shall have the following functions:

(a) To receive, transmit and disburse any funds of the Philippine Government payable in the United States;

(b) To receive, transmit and disburse any funds of the United States Government which may be placed on deposit with, or entrusted to it;

(c) To receive, transmit and disburse any funds of individuals, firms, companies or corporations engaged in business with the Philippine Islands, or having interest therein;

(d) To engage in business, to the extent permitted by the laws of the United States, with the Federal Reserve Bank of the district in which said branches or agencies may be located, and to conduct a deposit and discount business with the said Federal Reserve Bank in accordance with the laws of the United States, and under the instructions of the Board of Directors of the Philippine National Bank;

(e) And to exercise any other functions authorized by the Board of Directors.

Branches in foreign countries.

Section 75. The branches or agencies established in countries other than the United States shall transact a general banking business subject to the control and direction of the General Manager and the Board of Directors in Manila.

Duties of branches in the United States and foreign countries.

Section 76. The branches established in the United States and in foreign countries shall send daily reports of their operations to the Central Office at Manila, and submit to periodical inspection by an auditor designated by the Board of Directors.

Powers conferred upon branches and agencies in the Philippine Islands.

Section 77. The branch banks in the Philippine Islands shall exercise only the powers conferred upon them by the Board of Directors as recommended by the General Manager, shall make detailed daily reports of their transactions to the General Manager at Manila, and shall, at any time, be subject to examination by an examiner or examiners of the Bank or of the Government of the Philippine Islands.

ARTICLE XVI—SUNDRY PROVISIONS

Seal.

Section 78. The corporate seal of the Bank shall consist of two (2) concentric circles, between which shall be the name "Philippine National Bank" and in the center, the coat of arms of the Government of the Philippine Islands, and such seal as impressed on the margin hereof is hereby adopted as the corporate seal of the Bank.

Legal existence of this Bank.

Section 79. The legal existence of the Bank shall be for a period of fifty (50) years, counting from the 18th day of February, 1921, unless such period be extended by the Philippine Legislature.

Amendment of these By-Laws.

Section 80. These By-Laws may be amended, repealed or modified, entirely, or in part, only at a meeting of stockholders by the affirmative vote of the stockholders representing a majority of the capital.

Business hours.

Section 81. The Bank shall be open for business from 10:00 o'clock a. m. to 3:00 o'clock p. m. on each day except Sundays or such days or parts of days as may be legal holidays, and at such other times as the Board of Directors may deem advisable.

Penalties for violation of these By-Laws.

Section 82. Any officer, director, or stockholder who shall disobey or violate any of the provisions of these By-Laws shall be fined in an amount not to exceed twenty pesos (₱20.00), such fine to be imposed by the Board of Directors and if not paid at the time, to be deducted from any salary or dividend then due or that may thereafter become due said person.

By virtue of the authority granted in a resolution passed by the affirmative vote of the stockhold-

ers representing more than two-thirds of all the subscribed capital stock, whether paid or unpaid, at the meeting of February 18, 1921, held in accordance with the provisions of Act No. 2938 of the Philippine Legislature, the foregoing By-Laws were adopted by the Board of Directors of the Philippine National Bank at their 200th regular meeting as the By-Laws of the said Philippine National Bank. Copy of the resolution is hereto attached as appendix "A".

BOARD OF DIRECTORS

(Sgd.) MIGUEL UNSON
President

(Sgd.) W. TRINIDAD
Vice-President

(Sgd.) MIGUEL CUADERNO

(Sgd.) W. H. BABBIT

(Sgd.) R. CORPUS

(Sgd.) E. J. WESTERHOUSE

(Sgd.) MILTON E. SPRINGER

(Sgd.) GEORGE SEAVER

ATTEST:
(Sgd.) GUILLERMO MARTINEZ
Secretary

APPROVED
BOARD OF CONTROL

(Sgd.) CHARLES E. YEATER
Acting Governor-General

(Sgd.) MANUEL L. QUEZON
President of the Senate

(Sgd.) SERGIO OSMEÑA
Speaker of the House of Representatives

(APPENDIX "A")

EXTRACT FROM THE MINUTES OF THE EXTRAORDINARY MEETING OF THE STOCKHOLDERS OF THE PHILIPPINE NATIONAL BANK HELD ON FEBRUARY 18, 1921, AT THE OFFICES OF THE BANK ON THE ESCOLTA, MANILA

x x x x x x x x

"*BY-LAWS.* The following resolution was unanimously adopted:

> RESOLVED, that the Board of Directors be and is hereby authorized to repeal the By-Laws in force at present and to adopt new by-laws in accordance with the provisions of Act 2938. Provided, that the By-Laws so adopted is approved by the Board of Control.

x x x x x x x x

I, GUILLERMO MARTINEZ, Secretary of Philippine National Bank, do hereby certify that the above and foregoing is a true and accurate excerpt taken from the minutes of extraordinary meeting of Stockholders of the Philippine National Bank, duly convened and held at its offices on the Escolta, Manila, on February 18, 1921, at which a quorum was present and participated.

IN WITNESS WHEREOF, I have affixed hereunto my official signature and the seal of the institution in the City of Manila, this 18th day of March, 1921.

(Sgd.) GUILLERMO MARTINEZ
Secretary.

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EXHIBIT C.

MINUTES OF A SPECIAL MEETING OF THE SHAREHOLERS OF THE PHILIPPINE NATIONAL BANK, HELD JANUARY 17TH, 1927.

Pursuant to the request of the shareholders owning more than eighty per centum of the outstanding shares and a resolution of the Board of Directors of the Philippine National Bank adopted in accordance therewith, a special meeting of the shareholders of that corporation was called to be held at 3:00 o'clock p. m. on January 17th, 1927, at the office of the Bank, Masonic Building, Escolta, Manila, Philippine Islands. At the time and place designated for holding the meeting there were present the Governor-General of the Philippine Islands, representing the Government of the Philippine Islands as the owner of 97,332 shares of the stock of the Philippine National Bank, and more than twenty persons owning shares or representing the owners of shares.

The President of the Board of Directors, the Honorable Rafael Corpus, was present, acting as Chairman of the meeting and Mr. Leon Ancheta, the Secretary of the Board of Directors, was likewise present, acting as Secretary of the meeting. President Corpus called the meeting to order, stat-

ing that pursuant to the requirements of the by-laws timely notices of this special meeting had been sent to all shareholders of the Bank and had been published in the newspapers. He then directed the Secretary to read the roll call. The Secretary read the roll call, from which it appeared that of the 100,000 shares of stock outstanding 97,416 shares were represented at the meeting, including the 97,332 shares owned and standing in the name of the Government of the Philippine Islands, which said shares were represented by His Excellency, Leonard Wood, the Governor-General of the Philippine Islands. After the reading of the roll call the Secretary, upon the instruction of the President, read a letter addressed to the President of the Bank by the Honorable Manuel L. Quezon, President of the Senate, and the Honorable Manuel Roxas, Speaker of the House of Representatives, protesting against the holding of the special meeting upon the ground that the same had been improperly called by the Board of Directors. Upon the reading of this letter and another letter of similar purport written for and on behalf of certain absent shareholders, and after an answer to the same had been given verbally by Mr. F. C. Fisher, one of the shareholders present suggested to the Chair the absence of a quorum. Thereupon President Corpus stated that in his opinion the shares of the Government of the Philippine Islands in the Philippine National Bank can be voted only by the Board of Control es-

tablished by Section 4 of the Charter of the Bank, embodied in Act 2938 of the Philippine Legislature; that the Governor-General alone is without authority to vote the shares on behalf of the Government of the Philippine Islands; and that the other members of the Board of Control, namely, the Honorable Manuel L. Quezon and the Honorable Manuel Roxas, being absent from the meeting, the shares of the Philippine Government were not properly represented at the meeting and that being so there was no quorum. After the President had made this announcement Mr. F. C. Fisher, one of the shareholders by whom the request for this special meeting was signed, addressed the meeting, stating that in his opinion the ruling of the President as to the absence of a quorum was erroneous and that the meeting had been properly called, giving reasons for that opinion. He suggested that all stockholders or representatives of stockholders present who were of the same opinion should remain and continue the meeting by the election of a temporary chairman and a temporary secretary, and proceed with the transaction of the business for which it had been called. President Corpus then stated that he must declare the meeting adjourned for the lack of a quorum, and thereupon withdrew, together with several of the shareholders or representatives of shareholders then present.

Thereupon, on motion by Mr. F. C. Fisher, seconded by Colonel Hugh C. Smith, the Honorable

Miguel Romualdez was unanimously elected Chairman *pro tempore;* and upon motion of Mr. F. C. Fisher, seconded by Mr. Antonio Opisso, Mr. C. W. Franks was unanimously elected Secretary *pro tempore* of the meeting.

The Honorable Miguel Romualdez, Chairman *pro tempore*, then called the meeting to order and directed the Secretary *pro tempore* to read the call upon which this meeting was being held and to take a roll call of the shareholders present. The Secretary then read the call, as follows:

"PHILIPPINE NATIONAL BANK
NOTICE OF SPECIAL MEETING OF THE SHAREHOLDERS

To the Shareholders of the
Philippine National Bank:

A request having been filed by the Governor-General, purporting to have been made by him on behalf of the Government of the Philippine Islands, as the owner of 97,332 shares of the stock of this corporation, and by five other shareholders holding (9) shares, that a special meeting of the stockholders be held for the following purposes:

(a) To remove Directors Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo;

(b) To elect directors to fill the vacancies created by such removals, if made;

(c) To elect a director to fill the vacancy created by the resignation of Director A. Gideon; and

(d) To consider the advisability of repealing Section 51 of the By-Laws;

and this request purporting to have been made on behalf of stockholders holding more than two-thirds of the outstanding shares entitled to vote, the Board of Directors, by resolution adopted at a meeting held the 28th day of December, 1926, have resolved to convene a special meeting of the shareholders of this corporation, for the purposes above mentioned, to be held at the principal office of the Philippine National Bank, Masonic Temple Building, Escolta, Manila, Philippine Islands, at three o'clock p. m., January 17th, 1927; of which meeting notice is hereby given pursuant to the provisions of the Corporation Law and the By-Laws of the Philippine National Bank.

Manila, December 28, 1926.

(Sgd.) LEON ANCHETA,
Secretary."

The Secretary *pro tempore* then read the roll, and responses showed that the stockholders present in person and represented by proxies were as follows:

Names of Shareholders	*No. of Shares*	*By Whom Represented*
Government of the Philippine Islands	97,332	His Excellency, Leonard Wood, Governor-General of the Philippine Islands.
F. C. Fisher	1	In person
Hugh C. Smith	1	In person
C. M. Cotterman	1	In person
Mateo Herrera	2	In person
Delfin Jaranilla	1	In person
Manuel de Yriarte	1	In person
Antonio Escamilla	2	In person
L. M. Heras	5	In person
John Gordon	1	In person
R. R. Ely	1	In person
Halstead Dorey	1	In person
H. L. Heath	1	In person
John R. Wilson	1	In person
A. Gideon	1	In person
J. P. Heilbronn	6	In person
Miguel Romualdez	1	In person
C. W. Franks	1	In person
Concepcion de Velasco	4	Antonio Opisso
Albina Tuason	1	Antonio Opisso
Emilio Aguinaldo	1	Antonio Escamilla
Emilio Aguinaldo	1	Romarico Agcaoili
Benedictine Fathers	31	Miguel Romualdez
Ong Jon Chuan	13	Miguel Romualdez
	97,413	

After the roll call the Secretary *pro tempore* stated that there were present in person or by proxy shareholders owning 97,413 shares out of the one hundred thousand shares of stock outstanding. Thereupon the Chairman *pro tempore* declared that there was a quorum present and that the meeting was ready for the transaction of business.

His Execellency, Leonard Wood, the Governor-General of the Philippine Islands, then offered the following resolution:

> RESOLVED, That the By-Laws of the Philippine National Bank be amended by striking out Section 51 thereof.

The motion of the Governor-General for the adoption of the foregoing resolution was seconded by Mr. C. M. Cotterman, Mr. F. C. Fisher then requested that voting upon the resolution offered by the Governor-General and his second be by written ballot and that the Chair appoint two inspectors of election for the purpose of receiving the ballots of the persons present and counting and reporting upon their votes. Thereupon the Chairman *pro tempore* appointed Messrs. Hugh C. Smith and Antonio Opisso inspectors of election for the purpose of receiving the ballots cast at the meeting, canvassing the same, and reporting the result of such canvass to the Chair.

Thereupon the resolution proposed by the Governor-General and his second was voted upon by the written ballots by all persons present and the

ballots having been received and inspected by the canvassers, they reported to the Chair that the result of the balloting was as follows:

In favor of the resolution 97,413 votes were cast; and

Against the resolution no votes were cast.

There upon the Chairman *pro tempore* declared that the resolution had been adopted.

Mr. F. C. Fisher then offered the following resolution:

RESOLVED, That Messrs. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia be removed from office as directors of the corporation.

Mr. Fisher's motion for the adoption of this resolution was seconded by Colonel Smith. A vote upon the resolution was then taken by written ballot of the shareholders present in person and represented by proxies and these ballots having been received and canvassed by the inspectors Messrs. Smith and Opisso, they reported to the Chairman *pro tempore* that the result of the balloting was as follows:

In favor of the adoption of the resolution for the removal of the directors 97,411 votes were cast, including the 97,332 votes cast on behalf of the Government of the Philippine Islands by the Governor-General; and

Against the resolution no votes were cast. (Mr. C. M. Cotterman did not vote.)

Thereupon the Chairman *pro tempore* declared that the resolution had been adopted and that Messrs. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia had been removed from their offices as members of the Board of Directors of this corporation.

The Chairman *pro tempore* then announced that the next order of business would be the nomination and election of shareholders to fill the four existing vacancies in the Board of Directors of the Philippine National Bank created by the removal by the stockholders at this meeting of Directors Agoncillo, Roxas and Lavadia, and by the resignation of Director A. Gideon.

His Excellency, Leonard Wood, Governor-General of the Philippine Islands, on behalf of the Government of the Philippine Islands, nominated the following named shareholders as candidates for election to the four existing vacancies in the Board of Directors of the Philippine National Bank:

Mr. Leon M. Heras
Mr. Manuel Yriarte
Mr. John Gordon
Mr. A. Gideon

The nominations were seconded by General Halstead Dorey. On motion of Mr. Cotterman seconded by Mr. Opisso it was thereupon unanimously directed that nominations for director be closed.

The shareholders present then proceeded to cast their ballots in writing for the candidates for elec-

tion to the Board of Directors of the Philippine National Bank so placed in nomination, and the said ballots having been canvassed by the inspectors of election, Messrs. Smith and Opisso, said inspectors reported to the Chair that the result of the balloting was as follows:

For the election of Mr. L. M. Heras 97,408 votes were cast;
For the election of Mr. M. Yriarte 97,409 votes were cast;
For the election of Mr. John Gordon 97,410 votes were cast;
For the election of Mr. A. Gideon 97,410 votes were cast;

these votes including the 97,332 votes pertaining to the shares of the Government of the Philippine Islands in the Philippine National Bank cast by the Governor-General on behalf of the Philippine Government in favor of each of the candidates above named. Thereupon the Chairman *pro tempore* declared that the persons above named, viz.:

L. M. Heras,
M. Yriarte,
John Gordon, and
A. Gideon

had each received the number of votes reported by the inspectors of election and had been duly elected to membership on the Board of Directors of the Philippine National Bank.

There being no further business to transact the

meeting, on motion duly seconded and unanimously carried, was adjourned without day.

(Sgd.) M. ROMUALDEZ,
Chairman pro tempore.

ATTEST:

(Sgd.) C. W. FRANKS,
Secretary pro tempore.

We, the undersigned shareholders and proxies of shareholders present at the special meeting of the Philippine National Bank held at 3:00 o'clock p. m. on January 17th, 1927, hereby certify that we have read the foregoing minutes of the said special meeting and we hereby approve the same.

GOVERNMENT OF THE
PHILIPPINE ISLANDS,

By:.....
Governor-General of the
Philippine Islands.

On the 27th day of January, 1927, the Court issued the following order:

(CAPTION AND TITLE OMITTED)

Mr. Jose Abad Santos and others,
Attorneys for the Defendants.

GREETINGS:—

WHEREAS, this Court on the 26th instant approved a resolution, which is quoted below:

"Considering the petition filed in case G. R. No. 27225, The Government of the P. I. vs. Gregorio Agoncillo, et als., praying that after proper proceeding a judgment be entered declaring that the defendants and each of them are not entitled to membership in the Board of Directors of the Philippine National Bank, and that they and each of them be ousted and altogether excluded from the said offices and perpetually enjoined from exercising any of the powers inherent therein, and that Messrs. Manuel Yriarte, John Gordon and A. Gideon be inducted into the said offices, it is ordered that the respondents be required to demur or answer said petition within ten (10) days from notice hereof and from the receipt of copy of said petition."

NOW, THEREFORE, You are hereby ordered to demur or answer within ten days from the receipt of this summons with the copy of the petition.

GIVEN by the HONORABLE E. FINLEY JOHNSON, Acting Chief Justice of the Supreme Court of the Philippine Islands this 27th day of January of 1927.

(Sgd.) V. ALBERT,
Clerk, Supreme Court, P. I.

On the 7th day of February, 1927, the defendants presented the following answer to the complaint:

(CAPTION AND TITLE OMITTED)
ANSWER

Come now the defendants in the above-entitled

cause, by their undersigned attorneys, and answering plaintiff's complaint hereby

I

Admit the allegations of fact contained in paragraphs II, III, IV, V, VI, VII, X, XI, XII, XIII, XV, XVI, XVII, XVIII, XXIV, XXV, XXVI, XXVII, XXVIII, and XXX of the said complaint;

II

Deny each and every other allegation in said complaint not expressly admitted herein; and

BY WAY OF SPECIAL DEFENSE, defendants aver:

1. That the Philippine National Bank is a banking corporation duly organized and existing under and by virtue of the provisions of Act 2612 as amended by Acts 2747 and 2938 of the Philippine Legislature; and that the provisions of the Corportion Law of the Philippine Islands in so far as they are not contrary to or inconsistent with the provisions of said Act 2612, as amended, are made applicable to the said Philippine National Bank;

2. That defendants are and at all times hereinafter mentioned were duly acting as directors of the Philippine National Bank, having been previously duly elected as such in accordance with the provisions of the corporate charter and by-laws of said Bank;

3. That Section 4 of said Act 2612, as amended, in part provides:

> "x x x The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

4. That on or about November 9, 1926, the Governor-General of the Philippine Islands issued Executive Order No. 37 reading as follows:

> "EXECUTIVE ORDER
> No. 37
>
> Whereas it is held in an opinion of the Judge Advocate General of the United States Army, confirmed by an opinion of the Attorney-General of the United States, received at the Office of the Executive, November seventh, nineteen hundred and twenty-six, that the provisions of the statutes passed by the Philippine Legislature creating a 'Board of Control' or 'Committee' and enumerating the duties and powers thereof, with respect to certain corporations in which the Insular Government is the owner of stock, are nullities; that the remaining portions of said statutes are valid; that the duties imposed by said statutes upon said Board or Committee are executive in their nature, and subject to the provisions of the Organic Act relating to the executive functions; that said executive duties and powers may be performed as in other cases not specifically provided for by law.

Now, therefore, acting under authority of said opinions, the duties and powers heretofore exercised by said 'Board of Control' or 'Committee' shall, from and after this date, be exercised solely by the Governor-General pursuant to the executive power vested in him by the Organic Act.

(Sgd.) LEONARD WOOD,
Governor-General."

5. That on or about the 22nd day of December, 1926, at a meeting of the Board of Directors of the Philippine National Bank, the resignation of A. Gideon as a member of said Board having been previously accepted, a motion was presented to the effect that the Board of Directors convene a special meeting of the stockholders for the purpose of filling the vacancy thus created in said Board; that in presenting said motion the mover stated that the purpose of calling a special meeting of the stockholders was to provide a test case for the courts to pass on the question of the validity of the law creating the Board of Control; and that in view of the importance of the question it was then decided that the consideration of said motion be postponed until the next meeting of the Board of Directors to be held on December 28, 1926;

6. That at the next meeting of the Board of Directors of said Bank held on the 28th day of December, 1926, the motion for the convening of a special meeting of the stockholders referred to in paragraph 5 hereof was defeated;

7. That at the same meeting of the Board of Directors held on December 28, 1926, the motion referred to in paragraphs 5 and 6 hereof having been disapproved, the following proceedings took place, all as appears in the minutes of said meeting, to wit:

> *Special Stockholders' Meeting—Philippine National Bank*—Director Cotterman stated that as a result of the action of the Board on his motion (See Res. No. 267 of December 28, 1926) it became his painful duty to be a messenger of a petition signed by His Excellency, the Governor-General, in representation of the Government of the Philippine Islands and other five stockholders of the Bank. Thereupon, Director Cotterman handed the petition to the President. Said petition which was read to the Board in English and translated into Spanish, follows:
>
> > "Pursuant to the provisions of Section 34 of the Corporation Law (Act 1459) demand is hereby respectfully made by the undersigned shareholders, the registered owners of more than eighty (80) per centum of the outstanding shares of the stock of this corporation entitled to be voted, that a special meeting of the shareholders be called, to be held at three o'clock p. m., of the 17th day of January, 1927, at the office of the corporation, Masonic Temple Building, Escolta, Manila, P. I., for the purpose of voting upon the removal of Messrs. Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo from their offices as direc-

tors and the election at the same time and place, of other qualified persons to fill the vacancies created, if the said directors or either of them shall be removed from office at said special meeting; and for the purpose of filling the vacancy now existing due to the resignation of Director Gideon; and for the further purpose of considering the advisability of the repeal of Section Fifty-one (51) of the By-Laws.

"You are hereby required to give or cause to be given to each of the shareholders of this corporation notice of the time, place and purposes of the said special meeting, such notice to be given in the manner prescribed by Section 44 of the By-Laws and by Section 29 of the Corporation Law.

"You will please take notice that in the event of your failure or refusal to take the action hereby requested, within forty-eight hours from the delivery of this demand, such special meeting will be called and notice thereof given by one or more of the undersigned shareholders, pursuant to the provisions of Section 34 of the Corporation Law.

Shareholders	*No. of Shares*
The Government of the Philippine Islands,	
By (Sgd.) Leonard Wood,	
Governor-General	97,332
(Sgd.) F. C. Fisher	5

Shareholders		*No. of Shares*
(Sgd.)	H. L. Heath.....	1
„	J. L. Headington..	1
„	J. R. Wilson.....	1
„	John Gordon	1"

Director Cotterman moved that a special meeting of the stockholders be held in accordance with the petition submitted.

Director Lavadia said: "The By-Laws of the Bank specifically says that to call a special meeting of the stockholders same should be made at the request of stockholders owning one-third of all the stock of the Bank. In the petition submitted, it appears that the Governor-General is included assuming representation of all the shares of stock owned by the Government. I question the legality of the representation assumed by the Governor-General because there is a similar case pending in the court and I think we should not anticipate judicial judgment but to act in accordance therewith when the judgment shall have been rendered. In the meantime, I think we should adhere to the Charter of the Bank. I therefore believe that the petitioners do not have the number of shares of stock necessary to call for a special meeting."

Director Hind: "I just want to point out that in case the proper authority refuses to call a meeting, any individual can call the meeting."

Director Heilbronn: "There is no use discussing the matter. It should be let to take its own course in the courts. I believe a special meeting should be called according to the

petition which is presented in the manner and purposes mentioned in said petition."

Thereupon, several members of the Board asked that the question of calling a special meeting of the stockholders in accordance with the petition submitted, be voted upon. The President asked the members to cast their votes which resulted as follows:

Director Cotterman—Yes.
" Hind —Yes.
" Agoncillo —There is a new point. I say, yes, so that my removal is sure and made promptly.
" Lavadia —No.
" Valle Cruz—No.
" Roxas —No.
" Heilbronn—Yes.

The President announced that the motion to call a special meeting in accordance with the petition was approved four members voting in favor and three against."

8. That at said meeting of the Board of Directors of the Philippine National Bank held on the 28th day of December, 1926, referred to in paragraphs 6 and 7 hereof, there were present all of the remaining eight directors of said Bank; that as shown by the records of said meeting as set forth in paragraph 7 hereof, only four members of said Board voted in favor of the motion for the convening of a special meeting of the stockholders of said Bank in pursuance of the petition purporting to have

been presented on behalf of certain stockholders of said Bank; that Section 55 of the By-Laws of the Philippine National Bank provides:

> "SECTION 55. A majority of the Board of Directors shall constitute a quorum, and a majority of the members in attendance at any Board meeting shall decide its action. A minority of the Board present at any regular or special meeting may, in the absence of a quorum, adjourn to a later date, but may not transact any business until a quorum has been secured."

9. That Section 47 of the By-Laws of said Bank provides:

> "SECTION 47. The voting power of all stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the 'Board of Control' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

10. That by virtue of Section 4 of Act 2612, as amended, and the above-quoted section of the By-Laws of the Philippine National Bank, the petition for the calling of a special meeting of the stockholders as set out in paragraph 7 hereof is without legal force or effect in so far as the stock of the Government of the Philippine Islands is concerned, said petition having been signed on behalf of the Government of the Philippine Islands only by the Governor-General in his capacity as such and not by the Board of Control;

11. That Section 43 of the By-Laws of said Bank provides:

> "SECTION 43. Special meeting of stockholders may be held at any time at the office of the Bank, upon resolution of the Board of Directors, or at the request of stockholders owning one-third (1/3) of all the stock of the Bank.
>
> "Calls for special meeting shall be issued fifteen (15) days in advance and shall specify the time, place, and object of the meeting, and no business other than that specified in the call shall be transacted at such meeting."

12. That as alleged in paragraphs 8 and 9 hereof, there exists no valid resolution of the Board of Directors nor a valid petition of stockholders representing at least one-third of all the stock of the Philippine National Bank upon which a special meeting of the stockholders of said Bank, in accordance with Section 43 of the By-Laws above quoted, could be convened; nor was there any valid written demand by the stockholders representing at least one-half of the corporate stock of said Philippine National Bank for the calling of the special meeting of the stockholders for the purpose of removing directors as required in Section 34 of the Corporation Law of the Philippine Islands;

13. That notwithstanding the facts above set forth, the Secretary of the Philippine National Bank, purporting to act under the authority of the Board of Directors of the Philippine National Bank, upon

resolution thereof alleged to have been adopted at its meeting of December 28, 1926, the record of which proceeding is fully set forth in paragraph 7 hereof, did, on December 28, 1926, issue a supposed call for a special meeting of the stockholders of the Philippine National Bank to be held at its principal office in the Masonic Temple Building, Escolta, Manila, at 3 o'clock p. m., on January 17, 1927, for the purposes therein specified, to wit:

(a) To remove Directors Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo;
(b) To elect directors to fill the vacancies created by such removals, if made;
(c) To elect a director to fill the vacancy created by the resignation of Director A. Gideon; and
(d) To consider the advisability of repealing Section 51 of the By-Laws;

14. That on or about January 17, 1927, at 3 o'clock in the afternoon, pursuant to the notice aforementioned, various stockholders of the Philippine National Bank met at its office, Masonic Temple Building, Manila; that after the said meeting had been called to order, a protest against the holding of the meeting signed by the President of the Senate and the Speaker of the House of Representatives as members of the Board of Control was sub-

mitted to the meeting, which protest reads as follows:

"January 17, 1927.

Hon. Rafael Corpus
President
Philippine National Bank
Manila

S i r :

Having received notice of a special meeting of the stockholders of the Philippine National Bank appearing to have been issued by the Secretary of said Bank upon the authority of a resolution alleged to have been adopted at a meeting of the Board of Directors on December 28, 1926, we hereby strongly protest against the holding of such meeting.

FIRST, Because there exists at present no valid or lawful reason for the removal of directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, or either of them, or for the amendment of Section 51 of the By-Laws of the Bank and we know that the petition for the calling of this meeting was presented for the sole purpose of affording the parties signing the said petition an opportunity at this time to raise the issue, as regards the Bank, of the validity of the law creating the Board of Control, when there is now pending before the Supreme Court of the Philippine Islands an action wherein a similar question will necessarily be determined;

SECOND, Because the petition for the calling of such meeting purporting to be made on behalf of the Government of the Philippine Islands as the holder of more than 80% of

the stock of the Bank is signed only by the Governor-General asserting sole representation of said stock, when the charter and the by-laws of said Bank exclusively confer such representation upon the Board of Control of which we are members, and therefore, such petition, in so far as the stock of the Government of the Philippine Islands is concerned, is absolutely without legal force and effect, and should not have been acted upon by the Board of Directors;

THIRD, Because the alleged resolution of the Board of Directors authorizing the calling of such special meeting received the favorable vote of only four members of said Board out of eight members who were present at the meeting, and Section 55 of the By-Laws of the Bank provides that 'a majority of the members in attendance at any Board meeting shall decide its action,' consequently the alleged resolution authorizing the calling of this meeting is a nullity; and

FOURTH, Because the call for the meeting is issued under no legal authority as required by Section 43 of the By-Laws of the Bank, and therefore no meeting should be held thereunder.

You are therefore requested to refrain from holding any meeting of stockholders under the call above mentioned, and you are hereby notified that the undersigned will contest the validity of any action taken of such

meeting, should you insist in holding the same in spite of this protest.

Respectfully,

(Sgd.) MANUEL L. QUEZON,
President of the Senate.
Member, Board of Control.

(Sgd.) MANUEL ROXAS,
Speaker, House of Representatives.
Member, Board of Control."

that thereafter a stockholder present at the meeting raised the question of a quorum and the President of the Philippine National Bank, then presiding the meeting by virtue of Section 48 of the By-Laws of said Bank, ruled as follows:

> Section 4 of Act No. 2938, which constitutes the corporate charter of this Bank, provides that the voting power of all the stock of this Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board known as the Board of Control, composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. Section 47 of the By-Laws of the Bank, duly approved by the Board of Directors and by the Board of Control, and acted upon by the stockholders of the Bank for several years, also provides that the voting power of all the stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the Board of Control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

> It is my understanding that at present time, there is pending before the Supreme Court of the Philippine Islands a case wherein the validity of a similar provision in a charter of another corporation has been placed in issue; it is not our purpose to anticipate the decision in this case. Until the decision in that case is rendered, or until that particular provision of the Charter and By-Laws is repealed or otherwise amended, it is the duty of this Bank as a corporation to strictly abide by its corporate Charter and its By-Laws. Otherwise, the Bank will incur a breach of the Charter, and furthermore violate the rights of the minority stockholders.
>
> For this reason, I am of the opinion that the stock of the Government of the Philippine Islands can only be counted as duly represented in this meeting, if the Board of Control referred to in its corporate charter and its By-Laws appears before this meeting as representing said stock.

and that the said President of the Bank as chairman of the meeting, on the strength of the ruling above set forth, declared the meeting adjourned for lack of a quorum, over the protest of the Governor-General; that the proceedings at said meeting are all correctly recorded in the minutes thereof as kept by the Secretary of the Philippine National Bank, a copy whereof is hereto attached marked as Exhibit "A" and made a part hereof;

15. That notwithstanding the adjournment of the meeting of the stockholders as above set forth and after said adjournment, certain other stockhold-

ers remained and insisted upon holding a so-called meeting by virtue of the purported call above mentioned and attempted to transact the business for which the said meeting had been supposedly convened; that at this so-called meeting of the stockholders, the following private stockholders were present or represented by proxy:

Name of Shareholders	*No. of Shares*	*By Whom Represented*
F. C. Fisher	1	In person
Hugh S. Smith	1	In person
C. M. Cotterman	1	In person
Mateo Herrera	2	In person
Delfin Jaranilla	1	In person
Manuel de Yriarte	1	In person
Antonio Escamilla	2	In person
L. M. Heras	5	In person
John Gordon	1	In person
R. R. Ely	1	In person
Halstead Dorey	1	In person
H. L. Heath	1	In person
John R. Wilson	1	In person
A. Gideon	1	In person
J. P. Heilbronn	8	In person
Miguel Romualdez	1	In person
C. W. Franks	1	In person
Concepcion de Velasco	4	Antonio Opisso
Albina Tuason	1	Antonio Opisso
Emilio Aguinaldo	1	Antonio Escamilla
Emilio Aguinaldo	1	Romarico Agcaoili
Benedictine Fathers	31	Miguel Romualdez
Ong Jon Chuan	13	Miguel Romualdez

and that His Excellency, Leonard Wood, was also present at said so-called meeting and in his capacity

as Governor-General of the Philippine Islands, asserted sole representation of the 97,332 shares of stock held by the Government of the Philippine Islands in said Philippine National Bank, all contrary to the provisions of Section 4 of Act 2612, as amended, and of Section 47 of the By-Laws of said Philippine National Bank;

16. That out of the stockholders present at the so-called meeting as listed in paragraph 15 hereof, four of them, to wit, F. C. Fisher, John Gordon, H. L. Heath and John R. Wilson are among those five private stockholders who, with the Governor-General, signed the petition for the calling of the special meeting set forth in paragraph 6 hereof;

C. M. Cotterman and J. P. Heilbronn are two of the directors of the Philippine National Bank who voted in favor of the motion to call a special meeting of stockholders of said Bank pursuant to the said petition;

F. C. Fisher, Hugh C. Smith and Delfin Jaranilla are counsel and attorney, respectively, for the plaintiff herein;

R. R. Ely, Halstead Dorey and C. W. Franks are all members of the staff of the Governor-General;

Hugh C. Smith, Delfin Jaranilla, Antonio Escamilla, L. M. Heras, R. R. Ely and Halstead Dorey became stockholders of record long after the said purported call for the special meeting had been issued and shortly prior to the date set for said meeting;

Hugh C. Smith, Delfin Jaranilla, R. R. Ely and Halstead Dorey, with one share of stock for each, are transferees of all but one of the five shares of stock formerly held by F. C. Fisher, counsel for plaintiff herein and one of the stockholders who signed the petition for the calling of the meeting;

Emilio Aguinaldo was represented at said meeting by two proxies, namely Antonio Escamilla and Romarico Agcaoili;

And A. Gideon is the same A. Gideon who resigned as director of said Philippine National Bank on December 22, 1926, and who, as set forth in paragraphs XXIII and XVII of plaintiff's complaint, was again elected for the same vacancy caused by his own resignation, and who thereafter presented himself at the meeting of the Board of Directors of said Philippine National Bank on the 21st day of January, 1927, and then and there made demand that he be permitted to participate in said meeting as a member of said Board of Directors;

17. That at the so-called meeting of the stockholders referred to in paragraph 13 hereof, a resolution was offered by F. C. Fisher, counsel for the plaintiff herein, as follows:

> "RESOLVED, That Messrs. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia be removed from office as directors of the corporation."

that, as alleged in paragraph XXII of plaintiff's complaint, 97,411 votes were cast for the adoption of the

foregoing resolution, including the vote of the Governor-General, claiming the representation of 97,332 shares of the Government of the Philippine Islands in the Philippine National Bank, all in violation of the provisions of the corporate charter and by-laws of said Philippine National Bank;

18. That there exists no valid or lawful reason for the removal of the herein defendants as directors of said Bank and that no cause has been given or charges preferred against them or any of them which would justify the action taken at the said so-called meeting of the stockholders; that the removal of these defendants is purely an arbitrary act on the part of the Governor-General and the other private stockholders mentioned in paragrphs 15 and 16 hereof, and was done for the sole purpose of raising the issue and formulating a moot case, as regards the Philippine National Bank, on the legality of Section 4 of Act 2612, as amended, vesting the power to vote the stock of the Government of the Philippine Islands in the said Philippine National Bank in the Board of Control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives;

19. That by reason of the foregoing, the attempted removal of these defendants from their offices as directors of the Philippine National Bank is illegal and in contravention not only of Act 2612, as amended, constituting the Charter of the Philippine National Bank and of the By-Laws of said

Bank, but also of the Corporation Law of the Philippine Islands;

WHEREFORE, defendants pray that the complaint herein be dismissed, with costs against plaintiff.

Manila, Philippine Islands, February 7, 1927.

(Sgd.) JOSE ABAD SANTOS
(Sgd.) ARANETA & ZARAGOZA
(Sgd.) CHAS. E. TENNEY
(Sgd.) CAMUS, DELGADO & RECTO
(Sgd.) MARIANO H. DE HOYA
Attorneys for the Defendants,
Manila.

COPY RECEIVED the 7th day of February, 1927.
(Sgd.) DELFIN JARANILLA,
Attorney-General.

EXHIBIT A.

MINUTES OF THE SPECIAL MEETING OF STOCKHOLDERS OF THE PHILIPPINE NATIONAL BANK HELD ON JANUARY 17, 1927, AT ITS OFFICES ON THE ESCOLTA, MANILA.

The President called the meeting to order at 3:00 o'clock p. m. and instructed the Secretary to call the roll.

The Secretary reported that there are outstanding 100,000 shares of stock of the Philippine National Bank under Act No. 3174 of the Philippine Legislature. Of these, 97,332 shares are owned by the Government of the Philippine Islands and 2,668 shares, by private stockholders, according to the Bank's stock ledgers. The following private stockholders were present in person:

Stockholder	*No. of Shares*
Delfin Jaranilla	1
A. G. Escamilla	2
Miguel Romualdez	1
C. M. Cotterman	1
John R. Wilson	1
L. M. Heras	5
Halstead Dorey	1
H. L. Heath	1
A. Gideon	1
Serapion Valle Cruz	1
Carried forward	15

Stockholder	*No. of Shares*
Brought forward	15
F. C. Fisher	1
R. R. Ely	1
John Gordon	1
Manuel de Yriarte	1
C. W. Franks	1
Vicente T. Fernandez	1
Hugh C. Smith	1
Rafael Corpus	1
Mateo Herrera	2
Geronimo Santiago	1
J. P. Heilbronn	8
Total	34

The following stockholders were represented by proxy:

Stockholder	*No. of Shares*	*Proxy*
Concepcion Velasco	4	Antonio M. Opisso
Albina Tuason	1	—do—
Emilio Aguinaldo	1	Romarico Agcaoili
Emilio Aguinaldo	1	A. G. Escamilla
Corporacion de P. P. Benedictinos	31	Miguel Romualdez
Ong Jan Chuan	13	—do—
Victor Buencamino	7	Mauricio Cruz
Salvador Laguda	1	Ceferino J. de Ortega
Catalino Lavadia	1	Jose Yulo
Total	60	

The Secretary further reported that His Excellency, Leonard Wood, Governor-General of the Phil-

ippine Islands, was present and claimed in his capacity of Governor-General of the Philippines exclusive representation of the 97,332 shares of stock owned by the Government of the Philippine Islands.

The Chair announced that he has received a communication from the Honorable Manuel L. Quezon, President of the Senate, and the Honorable Manuel Roxas, Speaker of the House of Representatives, and forthwith instructed the Secretary to read same before the meeting.

The Secretary read the letter in full which is as follows:

"January 17, 1927.

Hon. Rafael Corpus,
President,
Philippine National Bank,
Manila.

Sir:

Having received notice of a special meeting of the stockholders of the Philippine National Bank appearing to have been issued by the Secretary of said Bank upon the authority of a resolution alleged to have been adopted at a meeting of the Board of Directors on December 28, 1926, we hereby strongly protest against the holding of such meeting,

FIRST, Because there exists at present no valid or lawful reason for the removal of directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, or either of them, or for the amendment of Section 51 of the By-Laws of the Bank and we know that the petition for the calling of this

meeting was presented for the sole purpose of affording the parties signing the said petition an opportunity at this time to raise the issue, as regards the Bank, of the validity of the law creating the Board of Control, when there is now pending before the Supreme Court of the Philippine Islands an action wherein a similar question will necessarily be determined;

SECOND, Because the petition for the calling of such meeting purporting to be made on behalf of the Government of the Philippine Islands as the holder of more than 80% of the stock of the Bank is signed only by the Governor-General asserting sole representation of said stock, when the charter and the by-laws of said Bank exclusively confer such representation upon the Board of Control of which we are members, and, therefore, such petition, in so far as the stock of the Government of the Philippine Islands is concerned, is absolutely without legal force and effect, and should not have been acted upon by the Board of Directors;

THIRD, Because the alleged resolution of the Board of Directors authorizing the calling of such special meeting received the favorable vote of only four members of said Board out of eight members who were present at the meeting, and Section 55 of the by-laws of the Bank provides that 'a majority of the members in attendance at any Board meeting shall decide its action,' consequently the alleged resolution authorizing the calling of this meeting is a nullity; and

FOURTH, Because the call for the meeting is

issued under no legal authority as required by Section 43 of the by-laws of the Bank and therefore no meeting should be held thereunder.

You are therefore requested to refrain from holding any meeting of stockholders under the call above mentioned, and you are hereby notified that the undersigned will contest the validity of any action taken of such meeting, should you insist in holding the same in spite of this protest.

Respectfully,

(Sgd.) MANUEL L. QUEZON,
President of the Senate.
Member, Board of Control.

(Sgd.) MANUEL ROXAS,
Speaker, House of Representatives.
Member, Board of Control."

The Chair also announced that he has just received a communication from Paredes, Buencamino & Yulo, Attorneys for Sergio Osmeña, Esperanza Limjap and the Estate of Estefania de Osmeña, and instructed the Secretary to read same before the meeting. Said letter which was read by the Secretary in full is attached hereto and made a part of these minutes.

Mr. Geronimo Santiago raised the question of quorum and asked the President to determine whether there was quorum or not.

Justice Fisher stated that before the meeting proceeds further he would like to be heard regarding the communication of President Quezon

and Speaker Roxas, he (Justice Fisher) being one of the signers of the petition for the calling of a special meeting.

Regarding the first ground of the protest, Justice Fisher said that the removal of directors of a corporation is a question that the stockholders themselves decide; that the Corporation Law does not require that specific statement of the grounds for the removal of directors should be made; that the position of a director of a corporation is similar to that of a party holding a power-of-attorney for another party and such power-of-attorney may be withdrawn by the party giving it at the latter's pleasure; that while it is true that there is pending in the Supreme Court an issue regarding the validity of the Board of Control, that fact is of no importance in this connection. It does not prevent any stockholder from exercising his rights as such.

As to the second ground of the protest, regarding the claim of the Governor-General for exclusive representation of the Government stock in the Bank, Justice Fisher said it raised the direct question of the validity of the Board of Control which is a matter for the courts to decide.

As to the third point, Justice Fisher called attention to certain well known precedents supporting the legality of the resolution of the Board calling for this special meeting. He cited the case of a corporation's board of directors in which four members attended a meeting. In a matter where two

of the members voted favorably and one against and the Chairman announced the resolution carried, the courts held that the resolution was in order as it implied that the President was in favor of the resolution. He therefore believed that the allegation contained in the protest that the resolution calling for a special meeting was a nullity cannot be sustained. Furthermore even if there had been no resolution whatever, Justice Fisher said that the Corporation Law authorized stockholders holding at least one-half (½) of the shares entitled to be voted, to call a special meeting for the purpose of removing directors and no action on the part of the Board of Directors is required in such circumstances.

As to the fourth ground, Justice Fisher said it did not need comment as it is similar to the third.

As to the letter of Paredes, Buencamino & Yulo, Justice Fisher said the grounds of protest are similar to those contained in the communication of President Quezon and Speaker Roxas.

Mr. Geronimo Santiago rose for a point of order stating that before discussing any matter like the protest of President Quezon and Speaker Roxas, the President should first determine whether there is a quorum or not.

Mr Romarico Agcaoili said that the mere fact that the call for a special meeting was issued by the President showed that he recognizes the right of the Governor-General to vote the stock of the Government and moved that the letter of protest be set

aside. Mayor Miguel Romualdez seconded the motion.

The Chair explained that the meeting has not yet entered into a discussion of business; that he will presently decide the question of whether there is a quorum or not. He said he just wanted the stockholders to have opportunity to express their opinion whether or not there existed a quorum; and so, as a matter of fairness, he let Justice Fisher to give his points of view on the questions raised by the letters above referred to, since these questions, or one of them at least, affect the question of quorum just raised by Mr. Santiago.

Mr. Agcaoili said it was unfair for the President to declare a lack of quorum as if he does not recognize the Governor-General to vote the Government shares of stock he could have said so before this time and saved the stockholders, who are here, the trouble of coming to the meeting. Mr.Agcaoili insisted on his motion that the letter of protest be filed and that the meeting starts the consideration of its business.

Col. Hugh C. Smith seconded the motion of Mr. Agcaoili but said that he did not subscribe to the remarks of Mr. Agcaoili as same are unfair to the President.

The Chairman ruled Mr. Agcaoili out of order; then ruled as follows:

> Section 4 of Act No. 2938, which constitutes the corporate charter of this Bank, pro-

vides that the voting power of all the stock of this Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board known as the Board of Control, composed of the Governor-General, the President of the Senate and the Speaker of the House of Representatives. Section 47 of the By-Laws of the Bank, duly approved by the Board of Directors and by the Board of Control, and acted upon by the stockholders of the Bank for several years, also provides that the voting power of all the stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the Board of Control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. It is my understanding that at the present time, there is pending before the Supreme Court of the Philippine Islands a case wherein the validity of a similar provision in a charter of another corporation has been placed in issue; it is not our purpose to anticipate the decision in this case. Until the decision in that case is rendered, or until that particular provision of the Charter and By-Laws is repealed or otherwise amended, it is the duty of this Bank as a corporation to strictly abide by its corporate Charter and its By-Laws. Otherwise, the Bank will incur a breach of that Charter, and furthermore violate the rights of the minority stockholders.

For this reason, I am of the opinion that the stock of the Government of the Philippine Islands can only be counted as duly represented in this meeting, if the Board of Control referred to in its corporate Charter and its

By-Laws appears before this meeting as representing said stock.

Thereupon, the Chairman adjourned the meeting for lack of quorum.

Justice Fisher said that he protested in his behalf and that of the Governor-General to the President's ruling that there is no quorum present. He insisted that there is a quorum because the Board of Directors by majority vote called for this special meeting at the instance of the petitioners. He said that if the Chairman believed there was no quorum that he should vacate the Chair.

The Chairman said that he would not vacate the Chair but would adjourn the meeting and thereupon announced the meeting adjourned for lack of a quorum.

(Sgd.) LEON ANCHETA,
Secretary.

APPROVED:

(Sgd.) R. CORPUS,
Chairman.

On the 7th day of February, 1927, the following motion was presented:

UNITED STATES OF AMERICA

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
Plaintiff,
vs.
GREGORIO AGONCILLO, BALDOMERO ROXAS and CATALINO LAVADIA,
Defendants,
GERONIMO SANTIAGO VICTOR BUENCAMINO, GREGORIO SINJIAN, EUFEMIA TAPIA, MARIA SALUD TAPIA, LADISLAO TAPIA and DIONISIO JAKOSALEM, as Administrator of the Estate of Pedro Cui,
Intervenors.

G. R. No. 27225
QUO WARRANTO

MOTION TO INTERVENE

Come now the intervenors in the above-entitled proceedings, by their undersigned attorneys, and respectfully represent to this Honorable Court that, as shown by the complaint in intervention hereto attached and made a part hereof, they are interested in the matter in litigation between the parties to

these proceedings and in the success of the defendants in resisting plaintiff's complaint, and that due to the nature of such interest their intervention herein is absolutely necessary for the reasonable protection thereof.

WHEREFORE, your petitioners pray that they be allowed to intervene in these proceedings and that the complaint in intervention hereto attached be considered as filed and served upon the parties hereto as of the date of the service of the order granting this motion, and that the said parties be ordered to plead thereto in accordance with tne rules of this Honorable Court.

Manila, Philippine Islands, February 7th, 1927.

(Sgd.) PAREDES, BUENCAMINO & YULO.

(Sgd.) ROSS, LAWRENCE & SELPH.
Attorneys for the Intervenors,
420 Pacific Building, Manila.

RECEIVED COPY this
7th day of February,
1927:
(Sgd.) DELFIN JARANILLA,
Attorney-General.
(Sgd.) F. C. FISHER.
(Sgd.) HUGH S. SMITH.
Special Counsel for
Plaintiff,
Manila.

On the same date, to wit, February 7, 1927, the following complaint in intervention was filed:

(CAPTION AND TITLE OMITTED)

Now come the intervenors above named, by their undersigned attorneys, and complaining of plaintiff herein, respectfully aver:

I

That the intervenors are all of legal age, and that the intervenors Geronimo Santiago, Victor Buencamino and Gregorio Sinjian are residents of the City of Manila, Ladislao Tapia, Eufemia Tapia and Maria Salud Tapia are residents of Tanauan, Batangas, and Dionisio Jakosalem, a resident of Cebu, Cebu, and the duly appointed and qualified administrator of the estate of Pedro Cui, a stockholder of record of the Philippine National Bank.

That the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia are all of age and residents, the first of Taal, Batangas, and the last two of the City of Manila; that said defendants are and at all times hereinafter mentioned were duly acting as directors of the Philippine National Bank, having been previously duly elected as such in accordance with the provisions of the corporate charter and by-laws of said Bank.

That plaintiff is a stockholder of record of the Philippine National Bank holding 97,332 shares of the capital stock of said Bank;

II

That the Philippine National Bank is a banking corporation duly organized and existing under and by virtue of the provisions of Act 2612, as amended by Acts 2747 and 2938 of the Philippine Legislature; and that by virtue of Section 41 of said Act 2612, as amended, the provisions of the Corporation Law of the Philippine Islands in so far as they are not contrary to or inconsistent with the provisions of said Act 2612, as amended, are made applicable to the said Philippine National Bank;

III

That the intervenors are all stockholders of record of the Philippine National Bank, being the owners altogether of 713 shares of stock having a par value of ₱71,300.00, which said shares of stock constitute over 25% of the total number of shares of said Philippine National Bank at present held by private parties other than the Government of the Philippine Islands;

IV

That on or about the 22nd day of December, 1926, at a meeting of the Board of Directors of said Philippine National Bank, after the resignation of A. Gideon as a member of said Board had been accepted, a motion was presented to the effect that the Board of Directors convene a special meeting of the stockholders of said Bank for the purpose of filling the vacancy thus created in said Board and of

amending Section 51 of the By-Laws of said Bank; that in presenting said motion the mover stated that the purpose of calling a special meeting of the stockholders was to provide a test case in the courts on the question of the validity of the law creating the Board of Control; and that in view of the importance of the question it was then decided that the consideration of said motion be postponed until the next meeting of the Board of Directors to be held on December 28, 1926;

V

That at the next meeting of the Board of Directors of said Bank held on the 28th day of December, 1926, the motion for the convening of a special meeting of the stockholders for the purpose of filling the vacancy caused by the resignation of the said A. Gideon and of the amendment of Section 51 of the By-Laws as set forth in paragraph IV hereof, was defeated;

VI

Thereafter, at the same meeting of the Board of Directors held on December 28, 1926, the motion referred to in paragraphs IV and V hereof having been disapproved, the following proceedings took place, all as appears in the minutes of said meeting, to wit:

> *Special Stockholders' Meeting—Philippine National Bank.*—Director Cotterman stated that as a result of the action of the Board on his motion (See Res. No. 267 of Dec-

ember 28, 1926) it became his painful duty to be a messenger of a petition signed by His Excellency, the Governor-General, in representation of the Government of the Philippine Islands and other five stockholders of the Bank. Thereupon, Director Cotterman handed the petition to the President. Said petition which was read to the Board in English and translated into Spanish, follows:

> " Pursuant to the provisions of Section 34 of the Corporation Law (Act 1459) demand is hereby respectfully made by the undersigned shareholders, the registered owners of more than eighty (80) per centum of the outstanding shares of the stock of this corporation entitled to be voted, that a special meeting of the shareholders be called, to be held at three o'clock p. m., of the 17th day of January, 1927, at the office of the corporation, Masonic Temple Building, Escolta, Manila, P. I., for the purpose of voting upon the removal of Messrs. Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo from their offices as directors and the election at the same time and place, of other qualified persons to fill the vacancies created, if the said directors or either of them shall be removed from office at said special meeting; and for the purpose of filling the vacancy now existing due to the resignation of Director Gideon; and for the further purpose of considering the advisability of the repeal of Section Fifty-one (51) of the By-Laws.

"You are hereby required to give or cause to be given to each of the shareholders of this corporation notice of the time, place and purposes of the said special meeting, such notice to be given in the manner prescribed by Section 44 of the By-Laws and by Section 29 of the Corporation Law.

"You will please take notice that in the event of your failure or refusal to take the action hereby requested, within forty-eight hours from the delivery of this demand, such special meeting will be called and notice thereof given pursuant by one or more of the undersigned shareholders, to the provisions of Section 34 of the Corporation Law.

Shareholders	*No. of Shares*
The Government of the Philippine Islands, By (Sgd.) Leonard Wood, Governor-General	97,332
(Sgd.) F. C. Fisher	5
" H. L. Heath	1
" J. L. Headington .	1
" J. R. Wilson	1
" John Gordon	1"

Director Cotterman moved that a special meeting of the stockholders be held in accordance with the petition submitted.

Director Lavadia said: "The By-Laws of the Bank specifically says that to call a special meeting of the stockholders same should be made at the request of stockholders owning

one-third of all the stock of the Bank. In the petition submitted, it appears that the Governor-General is included assuming representation of all the shares of stock owned by the Government. I question the legality of the representation assumed by the Governor-General because there is a similar case pending in the court and I think we should not anticipate judicial judgment but to act in accordance therewith when the judgment shall have been rendered. In the meantime, I think we should adhere to the Charter of the Bank. I therefore believe that the petitioners do not have the number of shares of stock necessary to call for a special meeting."

Director Hind: "I just want to point out that in case the proper authority refuses to call a meeting, any individual can call the meeting."

Director Heilbronn: "There is no use discussing the matter. It should be let to take its own course in the courts. I believe a special meeting should be called according to the petition which is presented in the manner and purposes mentioned in said petition."

Thereupon, several members of the Board asked that the question of calling a special meeting of the stockholders in accordance with the petition submitted, be voted upon. The President asked the members to cast their votes which resulted as follows:

Director Cotterman—Yes.
" Hind —Yes.
" Agoncillo —There is a new point. I say, yes, so that my re-

moval is sure and made promptly.

Director Lavadia —No.
" Valle Cruz—No.
" Roxas —No.
" Heilbronn —Yes.

The President announced that the motion to call a special meeting in accordance with the petition was approved four members voting in favor and three against.

VII

That at said meeting of the Board of Directors of said Philippine National Bank held on the 28th day of December, 1926, referred to in paragraphs V and VI hereof, there were present all of the remaining eight directors of said Bank; that as shown by the records of said meeting as set forth in paragraph VI hereof, only four members of said Board voted in favor of the motion for the convening of a special meeting of the stockholders of said Bank in pursuance of the petition purporting to have been presented on behalf of certain stockholders of said Bank; that Section 55 of the By-Laws of the Philippine National Bank provides:

"SECTION 55. A majority of the Board of Directors shall constitute a quorum, and a majority of the members in attendance at any Board meeting shall decide its action. A minority of the Board present at any regular or special meeting may, in the absence of a quorum, adjourn to a later date, but may not

transact any business until a quorum has been secured."

VIII

That Section 4 of Act 2612, as amended by Acts 2747 and 2938, which constitutes the corporate charter of the Philippine National Bank, in part provides:

> "x x x The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

that Section 47 of the By-Laws of said Bank also provides:

> "SECTION 47. The voting power of all stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the 'Board of Control' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

that by virtue of the foregoing provisions of the corporate charter and By-Laws of said Bank, the petition referred to in paragraphs VI and VII hereof in so far as it was signed solely by the Governor-General asserting sole representation of the stock held by the Government of the Philippine Islands

in the Philippine National Bank, is as to said stock of the Government of the Philippine Islands, without legal force or effect;

IX

That Section 43 of the By-Laws of said Bank provides:

> "SECTION 43. Special meetings of stockholders may be held at any time at the office of the Bank, upon resolution of the Board of Directors, or at the request of stockholders owning one-third (1/3) of all the stock of the Bank.
>
> "Calls for special meetings shall be issued fifteen (15) days in advance and shall specify the time, place, and object of the meeting, and no business other than that specified in the call shall be transacted at such meeting."

That as alleged in paragraphs VII and VIII hereof, there exists no valid resolution of the Board of Directors nor a valid petition of stockholders representing at least one-third of all the stock of the Philippine National Bank upon which a special meeting of the stockholders of said Bank in accordance with Section 43 of the By-Laws above quoted could be convened; nor was there any valid written demand by the stockholders representing at least one-half of the corporate stock of said Philipine National Bank for the calling of the special meeting of the stockholders for the purpose of removing directors

as required in Section 34 of the Corporation Law of the Philippine Islands;

X

That notwithstanding the facts above set forth, the Secretary of the Philippine National Bank, purporting to act under the authority of the Board of Directors of the Philippine National Bank, upon resolution thereof alleged to have been adopted at its meeting of December 28, 1926, the record of which proceeding is fully set forth in paragraph VI hereof, did, on December 28, 1926, issue a call for a special meeting of the stockholders of the Philippine National Bank to be held at its principal office Masonic Temple Building, Escolta, Manila, at 3 o'clock p. m. on January 17, 1927, for the purposes therein specified, as follows:

(a) To remove Directors Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo;

(b) To elect directors to fill the vacancies created by such removals, if made;

(c) To elect a director to fill the vacancy created by the resignation of Director A. Gideon; and

(d) To consider the advisability of repealing Section 51 of the By-Laws;

XI

That on or about January 17, 1927, at 3 o'clock in the afternoon pursuant to the notice aforementioned various stockholders of the Philippine Nation-

al Bank met at its office, Masonic Temple Building, Manila, but on account of the absence of a quorum, the President of the Philippine National Bank then presiding the meeting by virtue of Section 48 of the By-Laws of the Philippine National Bank, declared the meeting adjourned; that the proceedings at said meeting are all correctly recorded in the minutes thereof as kept by the Secretary of the Philippine National Bank, a copy whereof is hereto attached marked as Exhibit "A" and made a part hereof;

XII

That notwithstanding the adjournment of the meeting of the stockholders as above set forth and after said adjournment certain other stockholders insisted upon holding a so-called meeting by virtue of the purported call above mentioned and attempted to transact the business for which the said meeting had been convened; that at this so-called meeting of the stockholders, the following private stockholders were present or represented by proxy:

Name of Shareholders	*No. of Shares*	*By Whom Represented*
F. C. Fisher	1	In person
Hugh C. Smith	1	In person
C. M. Cotterman	1	In person
Mateo Herrera	2	In person
Delfin Jaranilla	1	In person
Manuel de Yriarte	1	In person
Antonio Escamilla	2	In person
L. M. Heras	5	In person

Names of Shareholders	*No. of Shares*	*By Whom Represented*
John Gordon	1	In person
R. R. Ely	1	In person
Halstead Dorey	1	In person
H. L. Heath	1	In person
John R. Wilson	1	In person
A. Gideon	1	In person
J. P. Heilbronn	8	In person
Miguel Romualdez	1	In person
C. W. Franks	1	In person
Concepcion de Velasco	4	Antonio Opisso
Albina Tuason	1	Antonio Opisso
Emilio Aguinaldo	1	Antonio Escamilla
Emilio Aguinaldo	1	Romarico Agcaoili
Benedictine Fathers	31	Miguel Romualdez
Ong Jon Chuan	13	Miguel Romualdez

and that His Excellency, Leonard Wood, was also present at said so-called meeting and in his capacity as Governor-General of the Philippine Islands, asserted sole representation of the 97,332 shares of stock held by the Government of the Philippine Islands in said Philippine National Bank, all contrary to the provisions of Section 4 of Act 2612, as amended, and of Section 47 of the By-Laws of said Philippine National Bank;

XIII

That among the stockholders present at the so-called meeting as listed in paragraph XII hereof, F. C. Fisher, John Gordon, H. L. Heath and John

R. Wilson are among those five private stockholders who with the Governor-General, signed the petition for the calling of the special meeting;

C. M. Cotterman and J. P. Heilbronn are two of the directors of the Philippine National Bank who voted in favor of the motion to call a special meeting of stockholders of said Bank pursuant to the said petition;

F. C. Fisher, Hugh C. Smith and Delfin Jaranilla are counsel and attorney, respectively, for the plaintiff herein;

R. R. Ely, Halstead Dorey and C. W. Franks are all members of the staff of the Governor-General;

Hugh C. Smith, Delfin Jaranilla, Antonio Escamilla, L. M. Heras, R. R. Ely and Halstead Dorey became stockholders of record long after the said purported call for the special meeting had been issued and shortly prior to the date set for said meeting;

Hugh C. Smith, Delfin Jaranilla, R. R. Ely and Halstead Dorey are transferees of all but one of the five shares of stock formerly held by F. C. Fisher, one of the stockholders who signed the petition for the calling of the meeting;

Emilio Aguinaldo was represented at said meeting by two proxies, namely Antonio Escamilla and Romarico Agcaoili;

And A. Gideon is the same A. Gideon who resigned as director of said Philippine National Bank on December 22, 1926, and who, as set forth in par-

agraphs XXIII and XXVII of plaintiff's complaint, was again elected for the vacancy caused by his resignation, and thereafter presented himself at the meeting of the Board of Directors of said Philippine National Bank on the 21st day of January, 1927, and then and there made demand that he be permitted to participate in said meeting as a member of said Board of Directors;

XIV

That at the so-called meeting of the stockholders referred to in paragraph XII hereof, a resolution was offered by F. C. Fisher, counsel for the plaintiff herein, as follows:

> "RESOLVED, That Messrs. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia be removed from office as directors of the corporation."

that, as alleged in paragrph XXII of plaintiff's complaint, 97,411 votes were cast for the adoption of the foregoing resolution, including the vote of the Governor-General, claiming the representation of 97,332 shares of the Government of the Philippine Islands in the Philippine National Bank, all in violation of the provisions of the corporate charter and By-Laws of said Philippine National Bank;

XV

That there exists no valid or lawful reason for the removal of Baldomero Roxas, Gregorio Agoncillo and Catalino Lavadia as directors of said Bank and

that no cause has been given or charges preferred against the said directors which would justify the action taken at the said so-called meeting of the stockholders; that the removal of said defendants is purely an arbitrary act on the part of the Governor-General and the other private stockholders as above set forth, and was done for the sole purpose of raising the issue and formulating a moot case, as regards the Philippine National Bank, on the legality of Section 4 of Act 2612, as amended, vesting the power to vote the stock of the Government of the Philippine Islands in the said Philippine National Bank in the Board of Control composed of the Governor-General, the President of the Senate and the Speaker of the House of Representatives;

XVI

That by reason of the foregoing, the attempted removal of the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia from their office as directors of the Philippine National Bank is illegal and in contravention not only of Act 2612, as amended, constituting the charter of the Philippine National Bank and of the By-Laws of said Bank, but also of the Corporation Law of the Philippine Islands;

XVII

That the said attempted removal of directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, resulting in the present controversy, will

inevitably affect the management and administration of the business and affairs of the Philippine National Bank and will result in the impairment of its credit, reputation and stability as a financial institution, to the irreparable damage of intervenors and other stockholders of said Bank.

WHEREFORE, intervenors pray that judgment be rendered herein dismissing plaintiff's complaint and declaring as null and void all action taken at the so-called meeting of the stockholders of the Philippine National Bank on January 17, 1927, particularly the resolution purporting to have been passed at said meeting removing directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia from their office as directors of the Philippine National Bank, with costs against the plaintiff.

Manila, Philippine Islands, February 7th, 1927.

(Sgd.) PAREDES, BUENCAMINO & YULO.
(Sgd.) ROSS, LAWRENCE & SELPH.
Attorneys for the Intervenors,
420 Pacific Building, Manila.

EXHIBIT A

MINUTES OF THE SPECIAL MEETING OF STOCKHOLDERS OF THE PHILIPPINE NATIONAL BANK HELD ON JANUARY 17, 1927

AT ITS OFFICES ON THE ESCOLTA, MANILA.

The President called the meeting to order at 3:00 o'clock p. m. and instructed the Secretary to call the roll.

The Secretary reported that there are outstanding 100,000 shares of stock of the Philippine National Bank under Act No. 3174 of the Philippine Legislature. Of these, 97,332 shares are owned by the Government of the Philippine Islands and 2,668 shares, by private stockholders, according to the Bank's stock ledgers. The following private stockholders were present in person:

Stockholder	*No. of Shares*
Delfin Jaranilla	1
A. G. Escamilla	2
Miguel Romualdez	1
C. M. Cotterman	1
John R. Wilson	1
L. M. Heras	5
Halstead Dorey	1
H. L. Heath	1
A. Gideon	1
Serapion Valle Cruz	1
Carried forward	15

Stockholder	*No. of Shares*
Brought forward	15
F. C. Fisher	1
R. R. Ely	1
John Gordon	1
Manuel de Yriarte	1
C. W. Franks	1
Vicente T. Fernandez	1
Hugh C. Smith	1
Rafael Corpus	1
Mateo Herrera	2
Geronimo Santiago	1
J. P. Heilbronn	8
Total	34

The following stockholders were represented by proxy:

Stockholder	*No. of Shares*	*Proxy*
Concepcion de Velasco	4	Antonio M. Opisso
Albina Tuason	1	—do—
Emilio Aguinaldo	1	Romarico Agcaoili
Emilio Aguinaldo	1	A. G. Escamilla
Corporacion de P. P. Benedictinos	31	Miguel Romualdez
Ong Jan Chuan	13	—do—
Victor Buencamino	7	Mauricio Cruz
Salvador Laguda	1	Ceferino J. de Ortega
Catalino Lavadia	1	Jose Yulo
Total	60	

The Secretary further reported that His Excellency, Leonard Wood, Governor-General of the Phil-

ippine Islands, was present and claimed in his capacity of Governor-General of the Philippines exclusive representation of the 97,332 shares of stock owned by the Government of the Philippine Islands.

The Chair announced that he has received a communication from the Honorable Manuel L. Quezon, President of the Senate, and the Honorable Manuel Roxas, Speaker of the House of Representatives, and forthwith instructed the Secretary to read same before the meeting.

The Secretary read the letter in full which is as follows:

"January 17, 1927.

Hon. Rafael Corpus,
President,
Philippine National Bank,
Manila.

Sir:

Having received notice of a special meeting of the stockholders of the Philippine National Bank appearing to have been issued by the Secretary of said Bank upon the authority of a resolution alleged to have been adopted at a meeting of the Board of Directors on December 28, 1926, we hereby strongly protest against the holding of such meeting,

FIRST, Because there exists at present no valid or lawful reason for the removal of directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, or either of them, or for the amendment of Section 51 of the By-Laws of the Bank and we know that the petition for the calling of this

meeting was presented for the sole purpose of affording the parties signing the said petition an opportunity at this time to raise the issue, as regards the Bank, of the validity of the law creating the Board of Control, when there is now pending before the Supreme Court of the Philippine Islands an action wherein a similar question will necessarily be determined;

SECOND, Because the petition for the calling of such meeting purporting to be made on behalf of the Government of the Philippine Islands as the holder of more than 80% of the stock of the Bank is signed only by the Governor-General asserting sole representation of said stock, when the charter and the by-laws of said Bank exclusively confer such representation upon the Board of Control of which we are members, and, therefore, such petition, in so far as the stock of the Government of the Philippine Islands is concerned, is absolutely without legal force and effect, and should not have been acted upon by the Board of Directors;

THIRD, Because the alleged resolution of the Board of Directors authorizing the calling of such special meeting received the favorable vote of only four members of said Board out of eight members who were present at the meeting, and Section 55 of the by-laws of the Bank provides that 'a majority of the members in attendance at any Board meeting shall decide its action,' consequently the alleged resolution authorizing the calling of this meeting is a nullity; and

FOURTH, Because the call for the meeting is

issued under no legal authority as required by Section 43 of the by-laws of the Bank, and therefore no meeting should be held thereunder.

You are therefore requested to refrain from holding any meeting of stockholders under the call above mentioned, and you are hereby notified that the undersigned will contest the validity of any action taken of such meeting, should you insist in holding the same in spite of this protest.

Respectfully,

(Sgd.) MANUEL L. QUEZON,
President of the Senate.
Member, Board of Control.

(Sgd.) MANUEL ROXAS,
Speaker, House of Representatives.
Member, Board of Control."

The Chair also announced that he has just received a communication from Paredes, Buencamino & Yulo, Attorneys for Sergio Osmeña, Esperanza Limjap and the Estate of Estefania de Osmeña, and instructed the Secretary to read same before the meeting. Said letter which was read by the Secretary in full is attached hereto and made a part of these minutes.

Mr. Geronimo Santiago raised the question of quorum and asked the President to determine whether there was quorum or not.

Justice Fisher stated that before the meeting proceeds further he would like to be heard regarding the communication of President Quezon and

Speaker Roxas, he (Justice Fisher) being one of the signers of the petition for the calling of a special meeting.

Regarding the first ground of the protest, Justice Fisher said that the removal of directors of a corporation is a question that the stockholders themselves decide; that the Corporation Law does not require that specific statement of the grounds for the removal of directors should be made; that the position of a director of a corporation is similar to that of a party holding a power-of-attorney for another party and such power-of-attorney may be withdrawn by the party giving it at the latter's pleasure; that while it is true that there is pending in the Supreme Court an issue regarding the validity of the Board of Control, that fact is of no importance in this connection. It does not prevent any stockholder from exercising his rights as such.

As to the second ground of the protest, regarding the claim of the Governor-General for exclusive representation of the Government stock in the Bank, Justice Fisher said it raised the direct question of the validity of the Board of Control which is a matter for the courts to decide.

As to the third point, Justice Fisher called attention to certain well known precedents supporting the legality of the resolution of the Board calling for this special meeting. He cited the case of a corporation's board of directors in which four members attended a meeting. In a matter where two of the

members voted favorably and one against and the Chairman announced the resolution carried, the courts held that the resolution was in order as it implied that the President was in favor of the resolution. He therefore believed that the allegation contained in the protest that the resolution calling for a special meeting was a nullity cannot be sustained. Furthermore even if there had been no resolution whatever, Justice Fisher said that the Corporation Law authorized stockholders holding at least one-half (½) of the shares entitled to be voted, to call a special meeting for the purpose of removing directors and no action on the part of the Board of Directors is required in such circumstances.

As to the fourth ground, Justice Fisher said it did not need comment as it is similar to the third.

As to the letter of Paredes, Buencamino & Yulo, Justice Fisher said the grounds of protest are similar to those contained in the communication of President Quezon and Speaker Roxas.

Mr. Geronimo Santiago rose for a point of order stating that before discussing any matter like the protest of President Quezon and Speaker Roxas, the President should first determine whether there is a quorum or not.

Mr. Romarico Agcaoili said that the mere fact that the call for a special meeting was issued by the President showed that he recognizes the right of the Governor-General to vote the stock of the Government and moved that the letter of protest be set

aside. Mayor Miguel Romualdez seconded the motion.

The Chair explained that the meeting has not yet entered into a discussion of business; that he will presently decide the question of whether there is a quorum or not. He said he just wanted the stockholders to have opportunity to express their opinion whether or not there existed a quorum; and so, as a matter of fairness, he let Justice Fisher to give his points of view on the questions raised by the letters above referred to, since these questions, or one of them at least, affect the question of quorum just raised by Mr. Santiago.

Mr. Agcaoili said it was unfair for the President to declare a lack of quorum as if he does not recognize the Governor-General to vote the Government shares of stock he could have said so before this time and saved the stockholders, who are here, the trouble of coming to the meeting. Mr. Agcaoili insisted on his motion that the letter of protest be filed and that the meeting starts the consideration of its business.

Col. Hugh C. Smith seconded the motion of Mr. Agcaoili but said that he did not subscribe to the remarks of Mr. Agcaoili as same are unfair to the President.

The Chairman ruled Mr. Agcaoili out of order; then ruled as follows:

> Section 4 of Act No. 2938, which constitutes the corporate charter of this Bank, pro-

vides that the voting power of all the stock of this Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board known as the Board of Control, composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. Section 47 of the By-Laws of the Bank, duly approved by the Board of Directors and by the Board of Control, and acted upon by the stockholders of the Bank for several years, also provides that the voting power of all the stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the Board of Control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. It is my understanding that at the present time, there is pending before the Supreme Court of the Philippine Islands a case wherein the validity of a similar provision in a charter of another corporation has been placed in issue; it is not our purpose to anticipate the decision in this case. Until the decision in that case is rendered, or until that particular provision of the Charter and By-Laws is repealed or otherwise amended, it is the duty of this Bank as a corporation to strictly abide by its corporate Charter and its By-Laws. Otherwise, the Bank will incur a breach of that Charter, and furthermore violate the rights of the minority stockholders.

For this reason, I am of the opinion that the stock of the Government of the Philippine Islands can only be counted as duly represented in this meeting, if the Board of Control referred to in its corporate Charter and its By-

Laws appears before this meeting as representing said stock.

Thereupon, the Chairman adjourned the meeting for lack of quorum.

Justice Fisher said that he protested in his behalf and that of the Governor-General to the President's ruling that there is no quorum present. He insisted that there is a quorum because the Board of Directors by majority vote called for this special meeting at the instance of the petitioners. He said that if the Chairman believed there was no quorum that he should vacate the Chair.

The Chairman said that he would not vacate the Chair but would adjourn the meeting and thereupon announced the meeting adjourned for lack of a quorum.

(Sgd.) LEON ANCHETA,
Secretary.

APPROVED:
(Sgd.) R. CORPUS,
Chairman.

On the same date, February 7, 1927, the following stipulation was filed:

(CAPTION AND TITLE OMITTED)

Now come the parties to the above-entitled cause, and, subject to the approval of this Honorable Court, stipulate and agree that the motion of date February 7, 1927, for permission to intervene herein may be granted, and that the pleading en-

titled "Complaint in Intervention" attached to said motion may be filed, and that plaintiff may have twenty-four hours to answer said complaint in intervention.

Manila, February 7, 1927.

(Sgd.) DELFIN JARANILLA,
Attorney-General of the Philippine Islands.
(Sgd.) JOSE A. SANTOS,
Attorneys for Defendants.
(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for Intervenors.

(Sgd.) F. C. FISHER,
(Sgd.) HUGH C. SMITH,
Special Counsel for Plaintiff.

On the same date, February 7, 1927, the plaintiff filed the following answer to the complaint in intervention:

(CAPTION AND TITLE OMITTED)

Now comes the plaintiff herein and answering the complaint in intervention says—

1. Plaintiff denies the averments of said complaint, except as herein expressly admitted.

2. Plaintiff admits the averments of fact of Paragraphs I (except the word "duly" in line 13 thereof), II, III, IV, V, VI, X (except the averment that the Secretary acted only upon the authority

of the Board of Directors), XI (except the words "on account of the absence of a quorum"), XIII, and XIV (except the last eighteen words thereof).

WHEREFORE, plaintiff prays that upon trial the complaint in intervention be dismissed, with costs.

Manila, February 7, 1927.

(Sgd.) DELFIN JARANILLA,
Attorney-General of the Philippine Islands.
(Sgd.) F. C. FISHER,
(Sgd.) HUGH C. SMITH,
Special Counsel for Plaintiff.

RECEIVED COPY February 7, 1927.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for Intervenors.
(Sgd.) JOSE A. SANTOS,
Attorneys for Defendants.

On the same date, February 7, 1927, the parties filed the following:

(CAPTION AND TITLE OMITTED)
STIPULATION OF FACTS

Now come the parties to the above-entitled cause, plaintiff, defendants and intervenors, and stipulate and agree as follows:

I

That the Philippine National Bank is a banking corporation duly organized and existing under and

by virtue of the provisions of Act 2612, as amended by Acts 2747 and 2938 of the Philippine Legislature; and that by virtue of Section 41 of said Act 2612, as amended, the provisions of the Corporation Law of the Philippine Islands in so far as they are not contrary to or inconsistent with the valid provisions of said Act 2612, as amended, are made applicable to the said Philippine National Bank;

II

That the intervenors are all of legal age, and that the intervenors Geronimo Santiago, Victor Buencamino and Gregorio Sinjian are residents of the City of Manila, Ladislao Tapia, Eufemia Tapia and Maria Salud Tapia are residents of Tanauan, Batangas, and Dionisio Jakosalem, a resident of Cebu, Cebu, and the duly appointed and qualified administrator of the estate of Pedro Cui, a stockholder of record of the Philippine National Bank.

That the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia are all of age and residents, the first of Taal, Batangas, and the last two of the City of Manila; that said defendants are and at all times hereinafter mentioned were acting as directors of the Philippine National Bank, having been duly elected as such, prior to December 1st, 1926, in accordance with the provisions of the corporate charter and by-laws of said Bank.

That plaintiff is a stockholder of record of the Philippine National Bank holding 97,332 shares of the capital stock of said Bank.

III

The Board of Directors of the Philippine National Bank consists of nine members.

IV

By Section 3 of Act 2612 it is provided that the authorized capital of the Philippine National Bank shall be ₱20,000,000.00 divided into 200,000 shares of the par value of ₱100.00 each.

V

By Section 4 of Act 2612 it was provided that the Government of the Philippine Islands should purchase with public funds, at par, 101,000 shares of the stock of the Philippine National Bank.

VI

By Section 4 of Act 2612 it was also provided:

> "That the voting power of all stock purchased directly by the Philippine Government as an investment from the general funds of the Government, and the voting power of all stock purchased for the benefit of the insurance fund, of the public works bonds sinking fund, and of the friar lands bonds sinking fund, shall be vested exclusively in the Governor-General."

VII

Pursuant to the authority of Act 2612 the Government of the Philippine Islands purchased and became the registered owner of the majority of the shares of the stock of the Philippine National Bank.

VIII

By Section 1 of Act 2747 the provisions of Section 4 of Act 2612 relating to the voting of the stock owned by the Government of the Philippine Islands in the Philippine National Bank were amended to read as follows, to wit:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

That Section 47 of the By-Laws of said Bank provides:

> "SECTION 47. The voting power of all stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the 'Board of Control' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

IX

Thereafter, by Act 2938 of the Philippine Legislature the authorized capital stock of the Philippine National Bank was increased to ₱50,000,000.00, and the Philippine Government was authorized to purchase shares of the stock of the Bank to the aggregate number of 153,000; and the provisions relating to the exercise of the voting power of the stock owned and controlled by the Government of the Phil-

ippine Islands in the Philippine National Bank were further amended to read as follows:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

X

That on November 9, 1926, the Governor-General of the Philippine Islands issued and published Executive Order No. 37 reading as follows:

> "EXECUTIVE ORDER
> No. 37
>
> Whereas it is held in an opinion of the Judge Advocate General of the United States Army, confirmed by an opinion of the Attorney-General of the United States, received at the Office of the Executive, November seventh, nineteen hundred and twenty-six, that the provisions of the statutes passed by the Philippine Legislature creating a 'Board of Control' or 'Committee' and enumerating the duties and powers thereof, with respect to certain corporations in which the Insular Government is the owner of stock, are nullities; that the remaining portions of said statutes are valid, that the duties imposed by said statutes upon said Board or Committee are executive in their nature, and subject to the provisions of the Organic Act relating to the executive functions; that said executive duties

and powers may be performed as in other cases not specifically provided for by law.

Now, therefore, acting under authority of said opinions, the duties and powers heretofore exercised by said 'Board of Control' or 'Committee' shall, from and after this date, be exercised solely by the Governor-General pursuant to the executive power vested in him by the Organic Act.

(Sgd.) LEONARD WOOD,
Governor-General."

XI

That on the 23rd day of December, 1926, at a meeting of the Board of Directors of the Philippine National Bank, the resignation of A. Gideon as a member of said Board having been previously accepted, a motion was presented to the effect that the Board of Directors convene a special meeting of the stockholders for the purpose of filling the vacancy thus created in said Board and of amending Section 51 of the By-Laws of said Bank; that in presenting said motion the mover stated that the purpose of calling a special meeting of the stockholders was to provide a test case for the courts to pass upon the question of the validity of the law creating the Board of Control; and that in view of the importance of the question it was then decided that the consideration of said motion be postponed until the next meeting of the Board of Directors to be held on Decem-

ber 28, 1926, all of which more fully appears from the minutes of said meeting which read as follows:

"EXCERPT FROM THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE PHILIPPINE NATIONAL BANK HELD ON DECEMBER 23, 1926, AT ITS OFFICES ON THE ESCOLTA

x x x x x x x x x

236. *By-Laws of Bank.* Director Cotterman said that he personally believes Section 51 of the By-Laws regarding filling of vacancies existing in the Board is illegal; that the filling of the vacancy should be done by the stockholders and forthwith presented the following resolution for approval by the Board:

> WHEREAS, a vacancy exists in the Board of Directors of the Philippine National Bank, due to the resignation of A. Gideon; and
>
> WHEREAS, doubt has been expressed by a member of this Board as to the validity of Section 51 of the by-laws of this corporation which purports to authorize the Board, by majority vote, to fill such vacancy for the unexpired term: Now, therefore, be it
>
> RESOLVED by the Board of Directors that a special meeting of the shareholders of the Philippine National Bank be held at its principal place of business, in the Masonic Temple Building, Escolta, Manila, Philippine Islands, at three o'clock, postmeridian, the

17th day of January, 1927, for the purpose of electing a director to fill the existing vacancy, and for the further purpose of considering the advisability of amending the by-laws by striking out Section 51 thereof; and

BE IT FURTHER RESOLVED that notice of the time, place and purposes of the said special meeting be given all shareholders of the Bank in the manner prescribed by Sections 43 and 44 of the by-laws.

Director Cotterman made the following remarks: "I like to make explanations which explain some points raised. There is no chance of our keeping this Bank out of the question regarding the Board of Control. Having been advised of the steps under contemplation which will bring the Bank to the question, this matter of bringing it up comes from me personally in order to give this Board the least possible embarrassment and without forcing us to commit ourselves either one or the other point which is taken up. This is the reason why Mr. Gideon has resigned. By this means it gives us a chance to call a meeting of the stockholders to consider the validity of Section 51 of the By-Laws and without involving this Board either as a whole or as individuals in the question of the validity or invalidity of the Board of Control, because whatever will result from the meeting of January 17th, it will not have any effect on the Board. I move the approval of this resolution without change or modification, because it has been carefully prepared to meet the

situation in the least embarrassing way to all of us. If it is disapproved, we will all be involved in the question a great deal more than under this plan.

"In regard to validity of Section 51, I have a couple of opinions which I would like to go into the records." Forthwith, Director Cotterman handed to the President the opinions in question which were read by the members of the Board. Said opinions are attached hereto and made a part of these minutes.

Director Lavadia asked if we could not postpone action so that the matter may be thoroughly studied. Director Cotterman said that there is a desire to clear up this question with the least possible delay and postponement of the matter will not help.

Director Lavadia made the following statements: "The position of a director is not very inducing. I only thought of the consequence of an action which may precipitate our clients to withdraw their deposits from the Bank. I, therefore, propose that we postpone action until next week. In the meantime, the President and the General Manager consult the Legal Department, preferably the Secretary of Justice, with regard to the action to be taken in connection with the proposed resolution."

Then Director Lavadia mentioned two clients who went to him to ask whether they should transfer their accounts to other banks on account of Executive Order No. 37.

Director Heilbronn said that the National Bank

is a government bank and is the safest of the banks in Manila.

Director Cotterman said that regarding postponement of action, it is possible that under the Corporation Law, the stockholders will then take steps to remove some directors to bring up the case, so that for the sake of getting the question in the easiest way possible, he recommended approval of the proposed resolution. Then Director Cotterman further said: "I want to say there is no animosity. On the other hand, the Governor-General says this is the best Board that has sat in the Bank. I also say that if the President recognizes any one party, the Governor-General will not resent the action of the President."

Director Hind made the following remarks: "In this matter of involving the Bank, there seems to be a disposition to bring the Bank into the question because of all the government corporations, it is the one where the issue is well defined. Supposing the Board, by majority vote, adopts the resolution to postpone, Mr. Cotterman thinks that action will be taken any way regardless of our vote regarding postponement. My feeling in brief is this—that the Bank as such regardless of the personal opinion of the Board should not take any action which stands in the way of immediate clarification of the Board of Control issue. I think it is the part of wisdom to have this matter clarified. In other words, if our delaying this matter would not precipitate ac-

tion, I would postpone it, but if there is a feeling that there is, then we should help to expedite it."

The President announced that votation on the amendment proposed by Director Lavadia to the motion of Director Cotterman is in order. The vote stood as fallows:

Director	Heilbronn	—	Against the amendment
"	Roxas	—	In favor of amendment
"	Valle Cruz	—	—do—
"	Lavadia	—	—do—
"	Agoncillo	—	—do—
"	Hind	—	Against the amendment
"	Cotterman	—	—do—

The President announced that the amendment of Director Lavadia was carried and approved.

x x x x x x x x x x

I hereby certify that the foregoing resolution was adopted by the Board of Directors of the Philippine National Bank on December 23, 1926.

(Sgd.) LEON ANCHETA,
Secretary,
Board of Directors,
Philippine National Bank."

XII

That at the next meeting of the Board of Directors of said Bank held on the 28th day of December, 1926, the motion for the convening of a special meeting of the stockholders for the purpose of

filling the vacancy caused by the resignation of the said A. Gideon and of the amendment of Section 51 of the By-Laws as set forth in paragrph XI hereof, was defeated; all of which more fully appears from the minutes of said meeting, as shown by the following excerpt therefrom, to wit:

"EXCERPT FROM THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE PHILIPPINE NATIONAL BANK HELD ON DECEMBER 28, 1926, AT ITS OFFICES ON THE ESCOLTA

x x x x x x x x x

267. *By-Laws—Special Meeting of Stockholders.* The President announced that the only matter pending before the meeting is the one held over from the last meeting regarding Director Cotterman's proposed resolution for the calling of a special meeting of the stockholders. The President stated that Judge Santos had prepared an opinion on the matter; that the Secretary of Justice had telephoned stating that due to lack of time he cannot render an opinion of the subject in time for this meeting. The President further stated that Justice Fisher was with him this noon and asked him to transmit the following explanation given by him in connection with the proposed resolution of Director Cotterman which follows:

First. He says that the contemplated resolution if approved will not commit the Board to recog-

nize either the Governor-General or the other party.

Second. The vote on the resolution does not imply that the Board is committing itself to declare Section 51 of the By-Laws either legal or illegal. The purpose is only to bring the matter to the stockholders who will decide as to its legality or illegality.

Third. He believes the confidence of the public would not be affected much less the occurrence of a panic because the purpose is only to fill the vacancy existing and to amend certain provisions of the By-Laws. On the other hand, if the resolution is not approved there would be more complications as in order to bring the case to the courts the Governor-General will ask for the calling of a special meeting for the purpose of voting on the removal of several directors.

Fourth. The formula presented, viz., that of calling a special meeting to fill the vacancy created by the resignation of Mr. Gideon and to consider the advisability of amending Section 51 of the By-Laws, is believed the easiest way of bringing the case to the courts with the least embarrassment to all concerned.

The President further stated that he asked Justice Fisher why the matter could not be held until the next annual meeting of the Bank in March. Justice Fisher said that it is a question which he cannot answer as he received the instructions from the Governor-General; that if the Board decides not to

approve the proposed resolution calling for a special meeting, then the Governor-General will proceed to call such a meeting.

The President then said that the above are the arguments given by Justice Fisher justifying the calling of a special meeting, which he asked to be conveyed to the Board before submitting the question to a vote. On the other hand, there is the opinion of the Attorney of the Bank which was read to the Board. Said opinion is attached hereto.

Director Hind stated that as he remarked last week, we should take the step that is less embarrassing considering the relation of the Bank to the public.

Director Cotterman said the following: 'I appreciate very much the opinion of Attorney Santos but I call your attention to the fact that his contention that there is no necessity for a special meeting is based entirely on his own personal judgment. I believe this is a matter for the directors to decide. For my part, I believe the circumstances justify the calling of a special meeting.'

The President then asked the Board to vote on the proposed resolution of Director Cotterman. The Secretary was asked to read the proposed resolution which is as follows:

> WHEREAS, a vacancy exists in the Board of Directors of the Philippine National Bank, due to the resignation of Mr. A. Gideon; and

WHEREAS, doubt has been expressed by a member of this Board as to the validity of Section 51 of the by-laws of this corporation which purports to authorize the Board, by majority vote, to fill such vacancy for the unexpired term: Now, therefore, be it

RESOLVED by the Board of Directors that a special meeting of the shareholders of the Philippine National Bank be held at its principal place of business, in the Masonic Temple Building, Escolta, Manila, Philippine Islands, at three o'clock, postmeridian, the 17th day of January, 1927, for the purpose of electing a director to fill the existing vacancy, and for the further purpose of considering the advisability of amending the by-laws by striking out Section 51 thereof; and

BE IT FURTHER RESOLVED that notice of the time, place and purposes of the said special meeting be given all shareholders of the Bank in the manner prescribed by Sections 43 and 44 of the By-Laws.

The voting stood as follows:

Director Heilbronn—Yes.
" Roxas —No.
" Valle Cruz—I wish to say something before giving my vote. I like to say that I am the first to recognize the independent judgment of the author of this motion but it seems that in voting in favor of the motion, I would act contrary to my conscience because since 1920 until today, while Director of this Bank, we have been filling vacancies on the Board with the sanction of the Board of Control so that it would be inconsistent on my part if

I would vote in favor of the proposition of Mr. Cotterman. Besides, Mr. Cotterman's contention that Section 51 of the By-Laws is not legal is doubtful. I believe that up to now, the By-Laws of the Bank which were prepared by the first Board of Directors and approved by the Board of Control are still in force and valid. I believe that the Charter and the By-Laws of the Bank are still in force until they have been declared null by the courts. I like to say that I have always felt admiration and respect for Mr. Cotterman, and I have nothing against him when I vote against his motion. I am acting freely as a member of the Board. If it is the intention to send this matter to the court, it may produce a panic and I don't like to be responsible for such result. Therefore, I vote 'no'.

Director Lavadia —No.
" Agoncillo —No.
" Hind —Yes.
" Cotterman—Yes.

The President announced that the motion of Director Cotterman was defeated, four voting against and three in favor.

x x x x x x x x x x

I hereby certify that the foregoing resolution of the Board of Directors of the Philippine National Bank was adopted on December 28, 1926.

(Sgd.) LEON ANCHETA,
Secretary,
Board of Directors,
Philippine National Bank."

XIII

That at the same meeting of the Board of Directors held on December 28, 1926, the motion referred to in paragraphs XI and XII hereof having been disapproved, the following proceedings took place, as recorded in the minutes of said meeting, to wit:

"*Special Stockholders' Meeting—Philippine National Bank.*

Director Cotterman stated that as a result of the action of the Board on his motion (See Res. No. 267 of December 28, 1926) it became his painful duty to be a messenger of a petition signed by His Excellency, the Governor-General, in representation of the Government of the Philippine Islands and other five stockholders of the Bank. Thereupon, Director Cotterman handed the petition to the President. Said petition which was read to the Board in English and translated into Spanish, follows:

> 'Pursuant to the provisions of Section 34 of the Corporation Law (Act 1459) demand is hereby respectfully made by the undersigned shareholders, the registered owners of more than eighty (80) per centum of the outstanding shares of the stock of this corporation entitled to be voted, that a special meeting of the shareholders be called, to be held at three o'clock, p. m., of the 17th day of January, 1927, at the office of the corporation, Masonic Temple Building, Escolta, Manila, P. I., for the purpose of voting upon the removal of Messrs. Baldomero Roxas, Catalino Lavadia

and Gregorio Agoncillo from their offices as directors and the election at the same time and place, of other qualified persons to fill the vacancies created, if the said directors or either of them shall be removed from office at said special meeting; and for the purpose of filling the vacancy now existing due to the resignation of Director Gideon; and for the further purpose of considering the advisability of the repeal of Section Fifty-one (51) of the By-Laws.

'You are hereby required to give or cause to be given to each of the shareholders of this corporation notice of the time, place and purposes of the said special meeting, such notice to be given in the manner prescribed by Section 44 of the By-Laws and by Section 29 of the Corporation Law.

'You will please take notice that in the event of your failure or refusal to take the action hereby requested, within forty-eight hours from the delivery of this demand, such special meeting will be called and notice thereof given by one or more of the undersigned shareholders, pursuant to the provisions of Section 34 of the Corporation Law.

Shareholders	*No. of Shares*
The Government of the Philippine Islands	
By (Sgd.) Leonard Wood, Governor-General	97,332
(Sgd.) F. C. Fisher	5
" H. L. Heath	1
" J. L. Headington	1
" J. R. Wilson	1
" John Gordon	1"

Director Cotterman moved that a special meeting of the stockholders be held in accordance with the petition submitted.

Director Lavadia said: 'The By-Laws of the Bank specifically says that to call a special meeting of the stockholders same should be made at the request of stockholders owning one-third of all the stock of the Bank. In the petition submitted, it appears that the Governor-General is included assuming representation of all the shares of stock owned by the Government. I question the legality of the representation assumed by the Governor-General because there is a similar case pending in the court and I think we should not anticipate judicial judgment but to act in accordance therewith when the judgment shall have been rendered. In the meantime, I think we should adhere to the Charter of the Bank. I therefore believe that the petitioners do not have the number of shares of stock necessary to call for a special meeting.'

Director Hind: 'I just want to point out that in case the proper authority refuses to call a meeting, any individual can call the meeting.'

Director Heilbronn: 'There is no use discussing the matter. It should be let to take its own course in the courts. I believe a special meeting should be called according to the petition which is presented in the manner and purposes mentioned in said petition.'

Thereupon, several members of the Board asked

that the question of calling a special meeting of the stockholders in accordance with the petition submitted, be voted upon. The President asked the members to cast their votes which resulted as follows:

Director	Cotterman	—Yes.
"	Hind	—Yes.
"	Agoncillo	—There is a new point. I say, yes, so that my removal is sure and make promptly.
"	Lavadia	—No.
"	Valle Cruz	—No.
"	Roxas	—No.
"	Heilbronn	—Yes.

The President announced that the motion to call a special meeting in accordance with the petition was approved four members voting in favor and three against."

XIV

That at said meeting of the Board of Directors of the Philippine National Bank held on the 28th day of December, 1926, referred to in paragraphs XII and XIII hereof, there were present all of the remaining eight directors of said Bank; that Section 55 of the By-Laws of the Philippine National Bank provides:

> "SECTION 55. A majority of the Board of Directors shall constitute a quorum, and a majority of the members in attendance at any Board meeting shall decide its action. A minority of the Board present at any regula

or special meeting may, in the absence of a quorum, adjourn to a later date, but may not transact any business until a quorum has been secured."

XV

That Section 43 of the By-Laws of said Bank provides:

> "SECTION 43. Special meeting of stockholders may be held at any time at the office of the Bank, upon resolution of the Board of Directors, or at the request of stockholders owning one-third (1/3) of all the stock of the Bank.
>
> "Calls for special meeting shall be issued fifteen (15) days in advance and shall specify the time, place, and object of the meeting, and no business other than that specified in the call shall be transacted at such meeting."

XVI

Thereupon the Secretary of the Bank, acting upon the written instructions of the President, sent printed notices of the time, place and purpose of the said special meeting to each and every shareholder of the said Bank at his last known place of residence, which said notice was sent at the time and in the manner prescribed by Section 44 of the by-laws of the said Bank and Section 29 of the Cor-

poration Law, which said printed notice is in words and figures as follows, to wit:

PHILIPPINE NATIONAL BANK
NOTICE OF SPECIAL MEETING
OF THE SHAREHOLDERS

To the Shareholders of the
Philippine National Bank:

A request having been filed by the Governor-General, purporting to have been made by him on behalf of the Government of the Philippine Islands, as the owner of 97,332 shares of the stock of this corporation, and by five other shareholders holding (9) shares, that a special meeting of the stockholders be held for the following purposes:

(a) To remove Directors Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo;

(b) To elect directors to fill the vacancies created by such removals, if made;

(c) To elect a director to fill the vacancy created by the resignation of Director A. Gideon; and

(d) To consider the advisability of repealing Section 51 of the By-Laws;

and this request purporting to have been made on behalf of stockholders holding more than two-thirds of the outstanding shares entitled to vote, the Board of Directors, by resolution adopted at a meeting held the 28th day of December, 1926, have resolved to convene a

special meeting of the shareholders of this corporation, for the purposes above mentioned, to be held at the principal office of the Philippine National Bank, Masonic Temple Building, Escolta, Manila, Philippine Islands, at three o'clock p. m., January 17th, 1927, of which meeting notice is hereby given pursuant to the provisions of the Corporation Law and the By-Laws of the Philippine National Bank.

Manila, December 28, 1926.

(Sgd.) LEON ANCHETA,
Secretary."

XVII

In addition to sending printed notices of the call of the said special meeting to each of the shareholders of the Bank, as averred in the paragraph next preceding, the Secretary of the Philippine National Bank caused the said notice as above set forth to be published for one week in two newspapers prior to the time set for the said meeting in two newspapers of general circulation published in the City of Manila—one printed in the English language and one printed in the Spanish language.

XVIII

At the time for which the said special meeting was called, to wit, three o'clock p. m., of the 17th day of January, 1927, there were outstanding 100,000 shares of the capital stock of the Philippine National Bank, of which 97,332 shares were owned by and were registered on the books of the corporation in

the name of the Government of the Philippine Islands (all of which said shares were purchased directly by the Philippine Government, as an investment, from the general funds of the Government), and 2,668 shares were owned by and registered in the name of private persons.

XIX

That on January 17, 1927, at 3 o'clock in the afternoon, pursuant to the notice aforementioned, a number of stockholders of the Philippine National Bank met at its office, Masonic Temple Building, Manila; that the proceedings at this meeting, as recorded in the minutes kept by the Secretary of said Bank, were as follows:

"MINUTES OF THE SPECIAL MEETING OF STOCKHOLDERS OF THE PHILIPPINE NATIONAL BANK HELD ON JANUARY 17, 1927,

AT ITS OFFICES ON THE ESCOLTA, MANILA.

The President called the meeting to order at 3:00 o'clock p. m. and instructed the Secretary to call the roll.

The Secretary reported that there are outstanding 100,000 shares of stock of the Philippine National Bank under Act No. 3174 of the Philippine Legislature. Of these, 97,332 shares are owned by the Government of the Philippine Islands and 2,668 shares, by private stockholders, according to the

Bank's stock ledgers. The following private stockholders were present in person:

Stockholder	*No. of Shares*
Delfin Jaranilla	1
A. G. Escamilla	2
Miguel Romualdez	1
C. M. Cotterman	1
John R. Wilson	1
L. M. Heras	5
Halstead Dorey	1
H. L. Heath	1
A. Gideon	1
Serapion Valle Cruz	1
F. C. Fisher	1
R. R. Ely	1
John Gordon	1
Manuel de Yriarte	1
C. W. Franks	1
Vicente T. Fernandez	1
Hugh C. Smith	1
Rafael Corpus	1
Mateo Herrera	2
Geronimo Santiago	1
J. P. Heilbronn	8
Total	34

The following stockholders were represented by proxy:

Stockholder	*No. of Shares*	*Proxy*
Concepcion Velasco	4	Antonio M. Opisso
Albina Tuason	1	—do—
Emilio Aguinaldo	1	Romarico Agcaoili
Carried forward	6	

Stockholder	*No. of Shares*	*Proxy*
Brought forward	6	
Emilio Aguinaldo	1	A. G. Escamilla
Corporacion de P. P. Benedictinos	31	Miguel Romualdez
Ong Jan Chuan	13	—do—
Victor Buencamino	7	Mauricio Cruz
Salvador Laguda	1	Ceferino J. de Ortega
Catalino Lavadia	1	Jose Yulo
Total	60	

The Secretary further reported that His Excellency, Leonard Wood, Governor-General of the Philippine Islands, was present and claimed in his capacity of Governor-General of the Philippines exclusive representation of the 97,332 shares of stock owned by the Government of the Philippine Islands.

The Chair announced that he has received a communication from the Honorable Manuel L. Quezon, President of the Senate, and the Honorable Manuel Roxas, Speaker of the House of Representatives, and forthwith instructed the Secretary to read same before the meeting.

The Secretary read the letter in full which is as follows:

January 17, 1927

Hon. Rafael Corpus,
President,
Philippine National Bank,
Manila.

Sir:

Having received notice of a special meetting of the stockholders of the Philippine National Bank appearing to have been issued by the Secretary of said Bank upon the authority of a resolution alleged to have been adopted at a meeting of the Board of Directors on December 28, 1926, we hereby strongly protest against the holding of such meeting,

FIRST, Because there exists at present no valid or lawful reason for the removal of directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, or either of them, or for the amendment of Section 51 of the By-Laws of the Bank and we know that the petition for the calling of this meeting was presented for the sole purpose of affording the parties signing the said petition an opportunity at this time to raise the issue, as regards the Bank, of the validity of the law creating the Board of Control, when there is now pending before the Supreme Court of the Philippine Islands an action wherein a similar question will necessarily be determined;

SECOND, Because the petition for the calling of such meeting purporting to be made on behalf of the Government of the Philippine

Islands as the holder of more than 80% of the stock of the Bank is signed only by the Governor-General asserting sole representation of said stock, when the charter and the by-laws of said Bank exclusively confer such representation upon the Board of Control of which we are members, and, therefore, such petition, in so far as the stock of the Government of the Philippine Islands is concerned, is absolutely without legal force and effect, and should not have been acted upon by the Board of Directors;

THIRD, Because the alleged resolution of the Board of Directors authorizing the calling of such special meeting received the favorable vote of only four members of said Board out of eight members who were present at the meeting, and Section 55 of the By-Laws of the Bank provides that 'a majority of the members in attendance at any Board meeting shall decide its action,' consequently the alleged resolution authorizing the calling of this meeting is a nullity; and

FOURTH, Because the call for the meeting is issued under no legal authority as required by Section 43 of the By-Laws of the Bank, and therefore no meeting should be held thereunder.

You are therefore requested to refrain from holding any meeting of stockholders under the call above mentioned, and you are hereby notified that the undersigned will contest the validity of any action taken of such meet-

ing, should you insist in holding the same in spite of this protest.

Respectfully,

(Sgd.) MANUEL L. QUEZON,
President of the Senate.
Member, Board of Control.
(Sgd.) MANUEL ROXAS,
Speaker, House of Representatives,
Member, Board of Control.'

The Chair also announced that he has just received a communication from Paredes, Buencamino & Yulo, Attorneys for Sergio Osmeña, Esperanza Limjap and the Estate of Estefania de Osmeña, and instructed the Secretary to read same before the meeting. Said letter which was read by the Secretary in full is attached hereto and made a part of these minutes.

Mr. Geronimo Santiago raised the question of quorum and asked the President to determine whether there was quorum or not.

Justice Fisher stated that before the meeting proceeds further he would like to be heard regarding the communication of President Quezon and Speaker Roxas, he (Justice Fisher) being one of the signers of the petition for the calling of a special meeting.

Regarding the first ground of the protest, Justice Fisher said that the removal of directors of a corporation is a question that the stockholders themselves decide; that the Corporation Law does not

require that specific statement of the ground for the removal of directors should be made; that the position of a director of a corporation is similar to that of a party holding a power-of-attorney for another party and such power-of-attorney may be withdrawn by the party giving it at the latter's pleasure; that while it is true that there is pending in the Supreme Court an issue regarding the validity of the Board of Control, that fact is of no importance in this connection. It does not prevent any stockholder from exercising his rights as such.

As to the second ground of the protest, regarding the claim of the Governor-General for exclusive representation of the Government stock in the Bank, Justice Fisher said it raised the direct question of the validity of the Board of Control which is a matter for the courts to decide.

As to the third point, Justice Fisher called attention to certain well known precedents supporting the legality of the resolution of the Board calling for this special meeting. He cited the case of a corporation's board of directors in which four members attended a meeting. In a matter where two of the members voted favorably and one against and the Chairman announced the resolution carried, the courts held that the resolution was in order as it implied that the President was in favor of the resolution. He therefore believed that the allegation contained in the protest that the resolution calling for a special meeting was a nullity cannot be sus-

tained. Furthermore even if there had been no resolution whatever, Justice Fisher said that the Corporation Law authorized stockholders holding at least one-half (½) of the shares entitled to be voted, to call a special meeting for the purpose of removing directors and no action on the part of the Board of Directors is required in such circumstances.

As to the fourth ground, Justice Fisher said it did not need comment as it is similar to the third.

As to the letter of Paredes, Buencamino & Yulo, Justice Fisher said the grounds of protest are similar to those contained in the communication of President Quezon and Speaker Roxas.

Mr. Geronimo Santiago rose for a point of order stating that before discussing any matter like the protest of President Quezon and Speaker Roxas, the President should first determine whether there is a quorum or not.

Mr. Romarico Agcaoili said that the mere fact that the call for a special meeting was issued by the President showed that he recognized the right of the Governor-General to vote the stock of the Government and moved that the letter of protest be set aside. Mayor Miguel Romualdez seconded the motion.

The Chair explained that the meeting has not yet entered into a discussion of business; that he will presently decide the question of whether there is a quorum or not. He said he just wanted the stockholders to have opportunity to express their

opinion whether or not there existed a quorum; and so, as a matter of fairness, he let Justice Fisher to give his points of view on the questions raised by the letters above referred to, since these questions, or one of them at least, affect the question of quorum just raised by Mr. Santiago.

Mr. Agcaoili said it was unfair for the President to declare a lack of quorum as if he does not recognize the Governor-General to vote the Government shares of stock he could have said so before this time and saved the stockholders, who are here, the trouble of coming to the meeting. Mr. Agcaoili insisted on his motion that the letter of protest be filed and that the meeting starts the consideration of its business.

Col. Hugh C. Smith seconded the motion of Mr. Agcaoili but said that he did not subscribe to the remarks of Mr. Agcaoili as same are unfair to the President.

The Chairman ruled Mr. Agcaoili out of order; then ruled as follows:

> Section 4 of Act No. 2938,, which constitutes the corporate charter of this Bank, provides that the voting power of all the stock of this Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board known as the Board of Control, composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. Section 47 of the By-Laws of the Bank, duly approved by the Board of Directors and by the

Board of Control, and acted upon by the stockholders of the Bank for several years, also provides that the voting power of all the stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the Board of Control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. It is my understanding that at the present time, there is pending before the Supreme Court of the Philippine Islands a case wherein the validity of a similar provision in a charter of another corporation has been placed in issue; it is not our purpose to anticipate the decision in this case. Until the decision in that case is rendered, or until that particular provision of the Charter and By-Laws is repealed or otherwise amended, it is the duty of this Bank as a corporation to strictly abide by its corporate Charter and its By-Laws. Otherwise, the Bank will incur a breach of that Charter, and furthermore violate the rights of the minority stockholders.

For this reason, I am of the opinion that the stock of the Government of the Philippine Islands can only be counted as duly represented in this meeting, if the Board of Control referred to in its corporate Charter and its By-Laws appears before this meeting as representing said stock.

Thereupon, the Chairman adjourned the meeting for lack of quorum.

Justice Fisher said that he protested in his behalf and that of the Governor-General to the President's ruling that there is no quorum present. He

insisted that there is a quorum because the Board of Directors by majority vote called for this special meeting at the instance of the petitioners. He said that if the Chairman believed there was no quorum that he should vacate the Chair.

The Chairman said that he would not vacate the Chair but would adjourn the meeting and thereupon announced the meeting adjourned for lack of a quorum.

(Sgd.) LEON ANCHETA,
Secretary.

APPROVED:
(Sgd.) R. CORPUS,
Chairman."

XX

Immediately after the President declared the meeting adjourned he left the room, accompanied by the Secretary, and some other stockholders; but His Excellency, the Governor-General, and twenty other persons, the owners or representatives of owners of shares of stock of the Philippine National Bank, remained in the place in which they had assembled pursuant to the call and immediately organized by the election of a Chairman *pro tempore* and a Secretary *pro tempore*, and proceeded with the transaction of the business for which the meeting had been called. The proceedings at this meeting as record-

ed by the Secretary *pro tempore* thereof were as follows:

"MINUTES OF A SPECIAL MEETING OF THE SHAREHOLDERS OF THE PHILIPPINE NATIONAL BANK HELD JANUARY 17TH, 1927.

Pursuant to the request of the shareholders owning more than eighty per centum of the outstanding shares and a resolution of the Board of Directors of the Philippine National Bank adopted in accordance therewith, a special meeting of the stockholders of that corporation was called to be held at 3:00 o'clock p. m. on January 17th, 1927, at the office of the Bank, Masonic Building, Escolta, Manila, Philippine Islands. At the time and place designated for holding the meeting there were present the Governor-General of the Philippine Islands, representing the Government of the Philippine Islands as the owner of 97,332 shares of the stock of the Philippine National Bank, and more than twenty persons owning shares or representing the owners of shares.

The President of the Board of Directors, the Honorable Rafael Corpus, was present, acting as Chairman of the meeting, and Mr. Leon Ancheta, the Secretary of the Board of Directors, was likewise present, acting as Secretary of the meeting. President Corpus called the meeting to order, stating that pursuant to the requirements of the by-laws

timely notices of this special meeting had been sent to all shareholders of the Bank and had been published in the newspapers. He then directed the Secretary to read the roll call. The Secretary read the roll call, from which it appeared that of the 100,000 shares of stock outstanding 97,416 shares were represented at the meeting, including the 97,332 shares owned and standing in the name of the Government of the Philippine Islands, which said shares were represented by His Excellency Leonard Wood, the Governor-General of the Philippine Islands. After the reading of the roll call the Secretary, upon the instruction of the President, read a letter addressed to the President of the Bank by the Honorable Manuel L. Quezon, President of the Senate, and the Honorable Manuel Roxas, Speaker of the House of Representatives, protesting against the holding of the special meeting upon the ground that the same had been improperly called by the Board of Directors. Upon the reading of this letter and another letter of similar purport written for and on behalf of certain absent shareholders, and after an answer to the same had been given verbally by Mr. F. C. Fisher, one of the shareholders present suggested to the Chair the absence of a quorum. Thereupon President Corpus stated that in his opinion the shares of the Government of the Philippine Islands in the Philippine National Bank can be voted only by the Board of Control established by Section 4 of the Charter of the Bank, embodied in Act 2938 of

the Philippine Legislature; that the Governor-General alone is without authority to vote the shares on behalf of the Government of the Philippine Islands; and that the other members of the Board of Control, namely, the Honorable Manuel L. Quezon and the Honorable Manuel Roxas, being absent from the meeting, the shares of the Philippine Government were not properly represented at the meeting, and that being so there was no quorum. After the President had made this announcement Mr. F. C. Fisher, one of the shareholders by whom the request for this special meeting was signed, addressed the meeting, stating that in his opinion the ruling of the President as to the absence of a quorum was erroneous and that the meeting had been properly called giving reasons for that opinion. He suggested that all stockholders or representatives of stockholders present who were of the same opinion should remain and continue the meeting by the election of a temporary chairman and a temporary secretary, and proceed with the transaction of the business for which it had been called. President Corpus then stated that he must declare the meeting adjourned for the lack of a quorum, and thereupon withdrew, together with several of the shareholders or representatives of shareholders then present.

Thereupon, on motion by Mr. F. C. Fisher, seconded by Colonel Hugh C. Smith, the Honorable Miguel Romualdez was unanimously elected Chairman *pro tempore;* and upon motion of Mr. F. C.

Fisher, seconded by Mr. Antonio Opisso, Mr. C. W. Franks was unanimously elected Secretary *pro tempore* of the meeting.

The Honorable Miguel Romualdez, Chairman *pro tempore*, then called the meeting to order and directed the Secretary *pro tempore* to read the call upon which this meeting was being held and to take a roll call of the shareholders present. The Secretary then read the call, as follows:

"PHILIPPINE NATIONAL BANK

NOTICE OF SPECIAL MEETING
OF THE SHAREHOLDERS

To the Shareholders of the
Philippine National Bank:

A request having been filed by the Governor-General, purporting to have been made by him on behalf of the Government of the Philippine Islands, as the owner of 97,332 shares of the stock of this corporation, and by five other shareholders holding (9) shares, that a special meeting of the stockholders be held for the following purposes:

(a) To remove Directors Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo;

(b) To elect directors to fill the vacancies created by such removals, if made;

(c) To elect a director to fill the vacancy created by the resignation of Director A. Gideon; and

(d) To consider the advisability of repealing Section 51 of the By-Laws.

and this request purporting to have been made on behalf of stockholders holding more than two-thirds of the outstanding shares entitled to vote, the Board of Directors, by resolution adopted at a meeting held the 28th day of December, 1926, have resolved to convene a special meeting of the shareholders of this corporation, for the purposes above mentioned, to be held at the principal office of the Philippine National Bank, Masonic Temple Building, Escolta, Manila, Philippine Islands, at three o'clock p. m., January 17th, 1927; of which meeting notice is hereby given pursuant to the provisions of the Corporation Law and the By-Laws of the Philippine National Bank.

Manila, December 28, 1926.

(Sgd.) LEON ANCHETA,
Secretary.'

The Secretary *pro tempore* then read the roll, and responses showed that the stockholders present in person and represented by proxies were as follows:

Names of Shareholders	*No. of Shares*	*By Whom Represented*
Government of the Philippine Islands	97,332	His Excellency, Leonard Wood, Governor-General of Philippine Islands
F. C.Fisher	1	In person
Hugh C. Smith	1	In person
C. M. Cotterman	1	In person
Mateo Herrera	2	In person

Delfin Jaranilla	1	In person
Manuel de Yriarte	1	In person
Antonio Escamilla	2	In person
L. M. Heras	5	In person
John Gordon	1	In person
R. R. Ely	1	In person
Halstead Dorey	1	In person
H. L. Heath	1	In person
John R. Wilson	1	In person
A. Gideon	1	In person
J. P. Heilbronn	8	In person
Miguel Romualdez	1	In person
C. W. Franks	1	In person
Concepcion de Velasco	4	Antonio Opisso
Albina Tuason	1	Antonio Opisso
Emilio Aguinaldo	1	Antonio Escamilla
Emilio Aguinaldo	1	Romarico Agcaoili
Benedictine Fathers	31	Miguel Romualdez
Ong Jon Chuan	13	Miguel Romualdez
	97,413	

After the roll call the Secretary *pro tempore* stated that there were present in person or by proxy shareholders owning 97,413 shares out of the one hundred thousand shares of stock outstanding. Thereupon the Chairman *pro tempore* declared that there was a quorum present and that the meeting was ready for the transaction of business.

His Excellency, Leonard Wood, the Governor-General of the Philippine Islands, then offered the following resolution:

> RESOLVED, That the By-Laws of the Philippine National Bank be amended by striking out Section 51 thereof.

The motion of the Governor-General for the adoption of the foregoing resolution was seconded by Mr. C. M. Cotterman, Mr. F. C. Fisher then requested that voting upon the resolution offered by the Governor-General and his second be by written ballot and that the Chair appoint two inspectors of election for the purpose of receiving the ballots of the persons present and counting and reporting upon their votes. Thereupon the Chairman *pro tempore* appointed Messrs. Hugh C. Smith and Antonio Opisso inspectors of election for the purpose of receiving the ballots cast at the meeting, canvassing the same, and reporting the result of such canvass to the Chair.

Thereupon the resolution proposed by the Governor-General and his second was voted upon by the written ballots by all persons present and the ballots having been received and inspected by the canvassers, they reported to the Chair that the result of the balloting was as follows:

In favor of the resolution 97,413 votes were cast; and

Against the resolution no votes were cast.

Thereupon the Chairman *pro tempore* declared that the resolution had been adopted.

Mr. F. C. Fisher then offered the following resolution:

RESOLVED, That Messrs. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia be removed from office as directors of the corporation.

Mr. Fisher's motion for the adoption of this resolu-

tion was seconded by Colonel Smith. A vote upon the resolution was then taken by written ballot of the stokholders present in person and represented by proxies and these ballots having been received and canvassed by the inspectors Messrs. Smith and Opisso, they reported to the Chairman *pro tempore* that the result of the balloting was as follows:

> In favor of the adoption of the resolution for the removal of the directors 97,411 votes were cast, including the 97,332 votes cast on behalf of the Government of the Philippine Islands by the Governor-General; and
>
> Against the resolution no votes were cast. (Mr. C. M. Cotterman did not vote.)

Thereupon the Chairman *pro tempore* declared that the resolution had been adopted and that Messrs. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia had been removed from their offices as members of the Board of Directors of this Corporation.

The Chairman *pro tempore* then announced that the next order of business would be the nomination and election of shareholders to fill the four existing vacancies in the Board of Directors of the Philippine National Bank created by the removal by the stockholders at this meeting of Directors Agoncillo, Roxas and Lavadia, and by the resignation of Director A. Gideon.

His Excellency, Leonard Wood, Governor-General of the Philippine Islands, on behalf of the Gov-

ernment of the Philippine Islands, nominated the following-named shareholders as candidates for election to the four existing vacancies in the Board of Directors of the Philippine National Bank:

Mr. Leon M. Heras
Mr. Manuel Yriarte
Mr. John Gordon
Mr. A. Gideon

The nominations were seconded by General Halstead Dorey. On motion of Mr. Cotterman seconded by Mr. Opisso it was thereupon unanimously directed that nominations for directors be closed.

The shareholders present then proceeded to cast their ballots in writing for the candidates for election to the Board of Directors of the Philippine National Bank so placed in nomination, and the said ballots, having been canvassed by the inspectors of election, Messrs. Smith and Opisso, said inspectors reported to the Chair that the result of the balloting was as follows:

For the election of Mr. L. M. Heras 97,408 votes were cast;

For the election of Mr. M. Yriarte 97,409 votes were cast;

For the election of Mr. John Gordon 97,410 votes were cast;

For the election of Mr. A. Gideon 97,410 votes were cast;

these votes including the 97,332 votes pertaining to the shares of the Government of the Philippine Islands in the Philippine National Bank cast by the

Governor-General on behalf of the Philippine Government in favor of each of the candidates above named. Thereupon the Chairman *pro tempore* declared that the persons above named, viz.:

L. M. Heras,
M. Yriarte,
John Gordon, and
A. Gideon

had each received the number of votes reported by the inspectors of election and had been duly elected to membership on the Board of Directors of the Philippine National Bank.

There being no further business to transact the meeting, on motion duly seconded and unanimously carried, was adjourned without day.

(Sgd.) M. ROMUALDEZ,
Chairman *pro tempore.*

(Sgd.) C. W. FRANKS,
Secretary *pro tempore.*"

XXI

That four of the stockholders present at the meeting as listed in paragraph XX hereof, F. C. Fisher, John Gordon, H. L. Heath and John R. Wilson are among those five private stockholders who, with the Governor-General, signed the petition for the calling of the special meeting;

C. M. Cotterman and J. P. Heilbronn are two of the directors of the Philippine National Bank who voted in favor of the motion to call a special meet-

ing of stockholders of said Bank pursuant to the said petition;

F. C. Fisher, Hugh C. Smith and Delfin Jaranilla are counsel and attorney, respectively, for the plaintiff herein;

R. R. Ely, Halstead Dorey and C. W. Franks are all members of the staff of the Governor-General;

Hugh C. Smith, Delfin Jaranilla, Antonio Escamilla, L. M. Heras, R. R. Ely and Halstead Dorey became stockholders of record long after the said purported call for the special meeting had been issued and shortly prior to the date set for said meeting;

Hugh C. Smith, Delfin Jaranilla, R. R. Ely and Halstead Dorey, each the holder of one share of stock, are the transferees of all but one of the five shares of stock formerly held by F. C. Fisher, counsel for plaintiff herein and one of the stockholders who signed the petition for the calling of the meeting;

Emilio Aguinaldo was represented at said meeting by two proxies, namely, Antonio Escamilla and Romarico Agcaoili;

And A. Gideon is the person who resigned as director of said Philippine National Bank on December 22, 1926, who was voted for by the Governor-General as appears in paragraph XX hereof, and who thereafter presented himself at the meeting of the Board of Directors of said Philippine National Bank on the 21st day of January, 1927, and then and

there made demand that he be permitted to participate in said meeting as a member of said Board of Directors;

XXII

Thereafter, the said L. M. Heras resigned the office of director to which he had been declared elected, as stated in paragraph XX hereof.

XXIII

That the Governor-General, in exercising his asserted right to vote the stock of the Philippine National Bank owned by the Philippine Government for the removal of the defendants herein named, did so upon the assumption that by the terms of the applicable provisions of the Corporation Law the right of the owners, or representatives of owners, of the requisite proportion of the outstanding shares of a corporation to remove directors is absolute and can be exercised without a statement of reasons therefor, and without regard to the merits or demerits of the directors to be removed; that no charges of improper conduct or disqualification to hold the office of director have been made against either of the defendants.

XXIV

Thereafter, to wit, the 21st day of January, 1927, a regular meeting of the Board of Directors of the Philippine National Bank was held at the offices of the corporation in the City of Manila, at which meeting the defendants Gregorio Agoncillo,

Baldomero Roxas and Catalino Lavadia were present, as were also the five uncontested members of the said board.

XXV

After the said meeting of the Board of Directors was called to order Messrs. Manuel Yriarte, John Gordon and A. Gideon presented themselves at the place of meeting, and submitted to the President of the Bank their certificates of election issued to them by the Secretary *pro tempore* at the meeting of the shareholders held January 17th, 1927, as averred, and then and there severally made demand that they be permitted to participate in the said meeting as members elect of the Board of Directors of the Philippine National Bank, and that the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, and each of them withdraw from the said meeting, and thereafter cease to exercise or to attempt to exercise any of the duties and powers inherent in the office of directors of the Philippine National Bank.

XXVI

Upon the demand so made by the said Manuel Yriarte, John Gordon and A. Gideon, the President of the Bank presiding at said directors' meeting stated that he declined to recognize their right to membership in said board, and the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia and each of them did then and there refuse

to surrender the offices of directors of the Philippine National Bank or to recognize the right thereto of the said Manuel Yriarte, John Gordon and A. Gideon; and the said defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia thereafter continued to participate in the transaction of the business of said meeting, and to exercise the functions of directors of the Philippine National Bank.

XXVII

That the defendants, namely, Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, and each of them, have since the 17th day of January, 1927, continued to exercise and do still exercise the offices of directors of the Philippine National Bank, and claim to be entitled to do so; and that Manuel Yriarte, John Gordon and A. Giedon, and each of them, claim to be entitled to said offices held adversely to them by said defendants.

XXVIII

That the Hon. Manuel L. Quezon and the Hon. Manuel Roxas are members of the Philippine Legislature and are respectively the President of the Senate and the Speaker of the House of Representatives thereof; that the Hon. Manuel L. Quezon has been the President of the Senate continuously since October, 1916, having been re-elected to that position at the beginning of each legislative session thereafter; that the Hon. Manuel Roxas was elected a Representative in the year 1922 and Speaker of

the House of Representatives in October, 1922, and has held such offices of Representative and Speaker of the House of Representatives continuously since said date, having been re-elected to that position at the beginning of each legislative session thereafter.

XXIX

That on January 17, 1927, Emilio Aguinaldo was the registered owner of two shares of the stock of the Philippine National Bank.

That on January 17, 1927, the office of Vice-President of the Philippine National Bank was held by Serapion Valle Cruz.

XXX

That Exhibit B attached to plaintiff's complaint is a correct copy of the by-laws of the Philippine National Bank, and is hereby made a part of this stipulation.

XXXI

That nothing in this stipulation contained shall be construed as an admission on the part of plaintiff that the proceedings recorded in the minutes identified as Exhibit C attached to plaintiff's complaint were not a continuation of the proceedings of the meeting recorded in the minutes identified as Exhibit A attached to plaintiff's complaint; or as an admission on the part of defendants and intervenors that the said meeting was not adjourned in law and in fact when so declared by the President of the Philippine National Bank; or as an

admission by either party of any conclusion of law directly or by inference contained in the pleadings of the other, or others.

Upon this stipulation of facts the case is hereby submitted to the Court for decision upon the arguments oral and written or printed, hereafter to be adduced by the parties.

Manila, P. I., February 7th, 1927.

(Sgd.) DELFIN JARANILLA,
Attorney-General of the Philippine Islands.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for Intervenors.

(Sgd.) JOSE A. SANTOS,
Attorneys for Defendants.

(Sgd.) F. C. FISHER,
(Sgd.) HUGH C. SMITH,
Special Counsel for Plaintiff.

On the same date, February 7, 1927, the parties filed the following:

(CAPTION AND TITLE OMITTED)
STIPULATION

It is hereby stipulated and agreed, subject to the approval of the Court, that the plaintiff and the intervenors shall serve and file their printed briefs within ten (10) days from this date; that the defendants shall serve and file their printed brief with-

in ten (10) days from the date of service upon them of plaintiff's brief; that inasmuch as the issues of law presented by this case are in many respects identical with those raised in the case of the Government of the Philippine Islands versus Milton E. Springer, et als., (G. R. No. 26979) now pending in this Court the arguments adduced and authorities cited in the briefs therein submitted or to be submitted may, to avoid unnecessary repetition, be incorporated by reference into the briefs to be submitted herein; and that the case shall be set down for oral argument at the earliest date convenient to the Court after the briefs of the parties have been filed, as herein provided.

Manila, P. I., February 7th, 1927.

(Sgd.) DELFIN JARANILLA,
Attorney-General of the Philippine Islands.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for Intervenors.

(Sgd.) JOSE A. SANTOS,
Attorneys for Defendants.

On the 11th day of February, 1927, the Court issued the following order:

> "It is ordered, with the conformity of the parties, that the case of The Government of the Philippine Islands vs. Gregorio Agoncillo, et al., G. R. No. 27225, be set for hearing

on Monday, February 28, 1927, at 9:00 o'clock a. m."

On the 15th day of February, 1927, the plaintiff filed its printed brief.

On the 17th day of February, 1927, the intervenors filed their printed brief.

On the 26th day of February, 1927, the plaintiff filed its printed reply to the brief of the intervenors.

On the 3rd day of March, 1927, the defendants filed their printed brief.

On the 10th day of March, 1927, the intervenors filed their printed memorandum.

On the 1st day of April, the Court rendered the following:

THE GOVERNMENT OF THE PHILIPPINE ISLANDS *v.* GREGORIO AGONCILLO, *et al.*, No. 27225

1. CONSTITUTIONAL LAW; GOVERNMENT OF THE PHILIPPINE ISLANDS; PHILIPPINE NATIONAL BANK; STATUTORY CONSTRUCTION: The doctrines announced in the companion case of the The Government of the Philippine Islands *v.* Milton E. Springer, *et al.*, No. 26979 followed and approved. What differences there are between the two cases on the principal question incline to strengthen rather than weaken the case at bar. In the case at bar, there is not alone a provision providing for a "Board of Control," but other provisions directing and authorizing the "Board of Control" to perform many other functions. In the case at bar, also the doctrine relating to

partial invalidity is fortified by the rule that where amendments to a statute are unconstitutional, the original statute as it existed before the attempted amendment remains in force.

2. ID.; ID.; ID.: The amendments to Section 4 of Act 2612, made by Section 1 of Act 2747 and Section 1 of Act 2938, providing for a Board of Control for the Philippine National Bank, found invalid, and the defendants ousted from the offices of directors of the Philippine National Bank, and the directors selected by the Governor-General placed in possession of those offices.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
Plaintiff,
vs.
GREGORIO AGONCILLO, BALDOMERO ROXAS, *and* CATALINO LAVADIA,
Defendants,
GERONIMO SANTIAGO, VICTOR BUENCAMINO, GREGORIO SINJIAN, EUFEMIA TAPIA, MARIA SALUD TAPIA, LADISLAO TAPIA, and DIONISIO JAKOSALEM, as Administrator of the Estate of Pedro Cui,
Intervenors.

No. 27225
Submitted:
Promulgated:
April 1, 1927.
Present:
Avanceña, C. J.
Johnson,
Street,
Malcolm,
Villamor,
Ostrand,
Johns,
Romualdez, and
Villa-Real, JJ.

DECISION

MALCOLM, J.:—

These are *quo warranto* proceedings instituted by the Government of the Philippine Islands against

the defendants, to oust them from their offices of directors of the Philippine National Bank, to which they were named by the legislative members of the Board of Control created by Acts 2747 and 2938. The fundamental legal issue is the validity of the amendments to Section 4 of Act 2612, made by Section 1 of Act 2747 and Section 1 of Act 2938, which provide that "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

The facts are stipulated. The Philippine National Bank is a corporation created by Acts of the Philippine Legislature. (Act 2612, as amended by Acts 2747 and 2938.) The authorized capital of the bank was originally placed at ₱20,000,000.00, was later increased to ₱50,000,000.00, and was finally reduced to ₱10,000,000.00. (Act 2612, Sec. 3; Act 2938, Sec. 1; Act 3174, Sec. 1.) The Government was first authorized to purchase a majority of the shares of the bank at par. (Act 2612, Sec. 4.) Subsequently, the Government was further authorized to buy not less than 153,000 of the shares and to buy the shares held privately. (Act 2938, Sec. 1; Act 3174, Sec. 1.) Of the present outstanding capital stock of the bank consisting of 100,000 shares of a par value of ₱100.00 each, 97,332 shares are held

by the Government and the remaining 2,668 shares are held by private persons.

The original bank charter provided that the voting power of all the stock of the bank purchased by the Philippine Government "shall be vested exclusively in the Governor-General." (Act 2612, Sec. 5.) Thereafter it was provided that the voting of the Government stock in the Philippine National Bank shall be "vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives." (Act 2747, Sec. 1.) Finally, the provisions relating to the voting power of the Government stock were amended to read as quoted in the opening paragraph of this decision. (Act 2938, Sec. 1.)

The affairs of the Philippine National Bank are managed by a board of nine directors. Prior to December 23, 1926, A. Gideon, one of the directors of the Philippine National Bank, resigned his office. At the meeting of the board convened on the date mentioned, Director Cotterman offered a resolution providing that a special meeting be held to fill the vacancy so created, and to consider the advisability of repealing Section 51 of the by-laws of the bank, by which it had been provided that vacancies in the board should be filled by the vote of the remaining members, pending action by the stockholders at the annual election. Action on this motion was postponed until the next meeting of the board. This meeting took place on December 28, 1926. Mr. Cot-

terman's resolution was then again discussed but was defeated. Immediately Director Cotterman presented a petition signed by the Governor-General on behalf of the Philippine Government and of five other shareholders of the Philippine National Bank, in which a demand was made that a special meeting of the stockholders of the bank be called for the purpose of considering the advisability of removing Directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, the repeal of Section 51 of the by-laws of the bank, the filling of the vacancy caused by the resignation of Director Gideon, and the election of other directors to fill the vacancies created by the removal of the directors named, should that action be taken by the stockholders. It was requested that the special meeting in question be held at three o'clock p. m., on the 17th day of January, 1927, at the office of the corporation. After submitting the petition, Director Cotterman moved that the special meeting of the stockholders be held in accordance with the petition. On the motion being put to vote, of the eight members of the board present, four voted "yes," three voted "no," and the President of the board remained silent. The chairman thereupon announced that the motion to call a special meeting as requested by the petition was approved. The secretary of the bank sent printed notices of the time, place, and purposes of the proposed special meeting to every shareholder of record of the Philippine Na-

tional Bank. Notice of call was given by publication in two newspapers of general circulation.

The special meeting was attended by twenty-six private persons owning and representing the owners of ninety-four of the privately-owned shares of the bank, and by the Governor-General asserting the right to attend the meeting in the name and on behalf of the Philippine Government, and to vote the 97,332 shares of the stock owned by the Government. The President of the Senate and the Speaker of the House of Representatives failed to attend the meeting, and contented themselves with writing a letter of protest against the meeting on the ground that the Governor-General alone has no right to represent the Philippine Government in relation to the exercise of the voting power of its stock in the bank. The President of the bank, acting as chairman of the meeting, ruled that he could not recognize the right of the Governor-General to vote the Government stock without the concurrence of the President of the Senate and the Speaker of the House of Representatives, and that, therefore, a *quorum* was not present. Upon this he declared the meeting adjourned. The Governor-General protested against the ruling and insisted that *a quorum* was present. The President of the bank and several of the private shareholders then left the room.

After all this had happened, the Governor-General and the other stockholders, twenty in number, remained and organized by the election of a chair-

man *pro tempore* and a secretary *pro tempore*. They then proceeded with the business for which the meeting had been called. It was determined by unanimous vote (a) To remove Directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia; (b) To amend the by-laws of the Bank by striking out Section 51 thereof; and (c) To elect Messrs. Manuel Yriarte, John Gordon, A. Gideon, and Leon M. Heras to fill the vacancies created by the resignation of Director Gideon and the removal of the other three directors above mentioned. Mr. Heras subsequently declined the position.

On January 21, 1927, a regular meeting of the board of directors of the Philippine National Bank was held at its office. Messrs. Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia as well as the other five directors of the bank whose seats were not contested were present. After the meeting was called to order, Messrs. Manuel Yriarte, John Gordon, and A. Gideon presented themselves, produced their certificates of election, and made demand that they be permitted to participate in the meeting as members-elect of the board of directors of the Philippine National Bank, and that Messrs. Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia withdraw from the meeting and cease to exercise any of the duties and powers inherent in the offices of directors of the bank. The presiding officer, who was the President of the bank, refused to recognize the right of Messrs. Yriarte, Gordon and Gideon to

membership in the board, and Messrs. Agoncillo, Roxas, and Lavadia refused to vacate the offices held by them, in favor of Messrs. Yriarte, Gordon, and Gideon. Messrs. Agoncillo, Roxas, and Lavadia have since January 17, 1927, exercised the functions of directors of the Philippine National Bank and claim to be entitled to do so.

There grew out of the facts which have been outlined the action of *quo warranto* brought by the Government of the Philippine Islands. The defendants answered admitting certain facts and denying others. The intervention of the holders of 713 shares of stock having a par value of P71,300.00 was permitted by stipulation duly approved by this Court. The intervenors have made common cause with the defendants.

The main issue has been sufficiently discussed in the previous case of the Government of the Philippine Islands v. Milton E. Springer, et al., No. 26979. What was said in that decision may be taken as incorporated herein. What differences there are between the two cases on the principal question incline to strengthen rather than weaken the instant case.

In the National Coal Company case, there was merely a provision for the voting of the stock of the Government in the company by a committee composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. In the Philippine National Bank case which is before us, there is not alone a provision provid-

ing for a "Board of Control," but other provisions directing and authorizing the "Board of Control" to perform many other functions. It is provided in the amended charter of the bank (Act 2938) that: (a) Foreign agencies of the bank may not be incorporated without the consent of the Board of the Control (Sec. 10); (b) The bank may not rediscount commercial paper in cases of emergency without the approval of the Board of Control (Sec. 14); (c) The board of directors may not appoint a general manager of the bank or remove him, and may not fix the salary of the general manager of the bank or the assistant general manager without the approval of the Board of Control (Sec. 18); (d) The manager of the bank is required to give the Board of Control any information in his possession regarding the operations of the bank (Sec. 20); (e) A representative of the Insular Auditor who shall act as chief of the auditing department of the bank and other employees of the department cannot be appointed without the approval of the Board of Control (Sec. 22); (f) The payment of compensation to the President or Vice-President of the bank for the performance of the duties of other officers may not be made without the approval of the Board of Control (Sec. 23); (g) The Secretary of Finance cannot suspend the requirement of maintaining the proportion of the reserve funds without the approval of the Board of Control (Sec. 44); (h) The bank may not guarantee payment of certain bonds and may

not buy bonds of other incorporated companies without the approval of the Board of Control (Sec. 45).

The application of the doctrine relating to partial invalidity is also here fortified by the rule that where amendments to a statute are unconstitutional, the original statute as it existed before the attempted amendment remains in force. (Eberle v. Michigan (1914) 232 U. S. 700; People v. Mensching (1907) 187 N. Y. S. 8, 10 L. R. A. 625.) In this connection, it should be recalled that the original statute vested the voting power of the stock owned by the Government in the bank exclusively in the Governor-General, which was legal, while the amendments found invalid, without express repeal, attempted to transfer this power to an illegally constituted Board of Control.

With the main issue disposed of, the remaining points invite but brief comment. While this is obviously a test case, it is not a moot case as contended by intervenors. It arises from a real and important controversy. The special meeting was properly called at the request of the stockholders owning more than one-third of all the stock of the bank in accordance with Section 43 of the by-laws of the bank. Section 34 of the Corporation Law provides that directors of a corporation "may be removed from office by a vote of two-thirds of the members entitled to vote," without specifying whether a motion must be for cause or may be without cause. But here as the defendants are unlawfully holding office, the mat-

ter really has little importance. Moreover, even under the system of cumulative voting, the intervenors could not have elected one director.

Being guided by the decision in the companion case of the Government of the Philippine Islands v. Milton E. Springer, et al., it results that the defendants shall be ousted and altogether excluded from the offices of directors of the Philippine National Bank which they are unlawfully holding, and that the three directors selected by the Governor-General shall be placed in possession of those offices. It is so ordered, without costs.

(Sgd.) GEO. A. MALCOLM.

WE CONCUR:

(Sgd.) THOS. A. STREET.
(Sgd.) JAMES A. OSTRAND.
(Sgd.) CHARLES A. JOHNS.
(Sgd.) NORBERTO ROMUALDEZ.

Johnson, J., concur in separate opinion.

Avanceña, C. J., and Villamor and Villareal, JJ., dissent in separate opinion.

G. R. No. 27225

GOVERNMENT OF THE PHILIPPINE ISLANDS (ex rel. Manuel Yriarte, John Gordon and A. Gideon), petitioner, vs. GREGORIO AGONCILLO, et al., respondents.

QUO WARRANTO—RIGHT OF RESPONDENTS TO ACT AS MEMBERS OF THE BOARD OF DIRECTORS OF THE PHILIPPINE NATIONAL BANK. Upon the facts of record and the law applicable thereto, it is held,

that Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia are unlawfully and illegally holding and exercising the position of members of the Board of Directors of the Philippine National Bank, and should be ousted and altogether excluded therefrom; that Manuel Yriarte, John Gordon and A. Gideon have been duly and legally elected as members of the Board of Directors of the Philippine National Bank, and judgment is rendered that they be inducted into said position, to take charge thereof and to perform the duties incumbent upon them as members of said Board.

The facts in this case in re the powers of the Legislature and its right to participate in the execution of the laws in relation with the powers of the executive and judicial departments of the Government, are exactly analogous to the facts in the case of the Government of the Philippine Islands (ex rel. Romarico Agcaoili, H. L. Heath and Salvador Lagdameo) vs. Milton E. Springer, et al. The principles therein announced are therefore not stated in the syllabus of this case.

IN BANC

Justices Present:
Avanceña, C. J.
Johnson, Street
Malcolm, Villamor
Ostrand, Johns
Romualdez and
Villa-Real JJ.

GOVERNMENT OF THE PHILIPPINE ISLANDS Ex rel. Manuel Yriarte, John Gordon and A. Gideon),
Plaintiff and Petitioner

vs.

GREGORIO AGONCILLO, BALDOMERO ROXAS *and* CATALINO LAVADIA,
Defendants and Respondents

GERONIMO SANTIAGO, VICTOR BUENCAMINO, GREGORIO SINJIAN, EUFEMIA TAPIA, MARIA SALUD TAPIA, LADISLAO TAPIA, *and* DIONISIO JAKOSALEM, as Administrator of the Estate of Pedro Cui,
Intervenors.

G. R. No. 27225
Submitted ....day of....., 1927.
Promulgated 1st day of Apr., 1927.

DECISION

JOHNSON, J., concurring:

Under the admitted facts the writ of *quo warranto* prayed for should be granted. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia are unlawfully and illegally holding and exercising the positions of members of the Board of Directors of the Philippine National Bank and should be ousted and altogether excluded therefrom; that Manuel Yriarte, John Gordon and A. Gideon have been duly and legally elected as members of the Board of Directors of the Philippine National Bank, and judg-

ment is rendered that they be inducted into said position, to take charge thereof and to perform the duties incumbent upon them as members of said Board of Directors.

The principal questions involved in this action are:

(a) May the Legislative Department of the Government of the Philippine Islands adopt a law and provide that some of its members shall take part in its execution;

(b) Was the Governor-General of the Philippine Islands authorized, under the law, to promulgate General Order No. 37;

(c) Were the respondents legally elected as members of the Board of Directors of the Philippine National Bank; and

(d) What was the effect of the absence of the President of the Senate and the Speaker of the House of Representatives at the time of the election of Manuel Yriarte, John Gordon and A. Gideon and their failure to participate in the election of members of the Board of Directors of the Philippine National Bank.

The questions presented by the petition, answers and stipulated facts involve the respective powers of two great departments of the Government in matters of the enactment and execution of laws. The Supreme Court is called upon to act as an umpire. The questions presented should be seriously

considered by this Court and not to be lightly resolved on.

The said questions were presented to the Supreme Court for solution in an original action, praying for the issuance of the extraordinary legal writ of quo warranto. In relation with the questions involved the specific and definite purpose of the action is (a) to inquire into the right of the respondents Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia to act as members of the Board of Directors of the Philippine National Bank, a private banking corporation created by special charter by an Act of the Philippine Legislature; and (b) to have inducted into office, in their place and stead, said Manuel Yriarte, John Gordon and A. Gideon.

To the petition presented by the Government of the Philippine Islands (ex rel. Manuel Yriarte, John Gordon and A. Gideon) the respondents demurred. Later the said intervenors were admitted as parties, and presented their answer. By a stipulation of facts a question of law only is presented for solution.

THE FACTS UPON WHICH THE ACTION IS BASED

The facts are not in dispute. They have been stipulated. They are few, clear and well defined. For the purposes of this decision they may be briefly stated. They are: That on the 4th day of February, 1916, the Philippine Legislature adopted Act No. 2612, entitled "An Act Creating the Philippine Na-

tional Bank." Said Act provided that the Philippine National Bank shall be a body corporate and shall have the powers enumerated in Section 2 thereof. It further provided that the capital of the Philippine National Bank shall be ₱20,000,000.00, Philippine currency, divided into 200,000 shares of the value, at par, of ₱100.00, Philippine currency. Section 4 of said Act provided that the Government of the Philippine Islands not later than January 31, 1917, shall purchase 101,000 shares at par of the said National Bank and that 99,000 shares of said capital stock shall be offered to the public at par, in accordance with the provisions of said Act. Section 5 of said Act provided the funds for the purchase of the stock by the Government of the Philippine Islands. Section 5 also provided that the voting power of all stock purchased directly by the Philippine Government, as an investment from the general funds of the Government, and the voting power of all stock purchased, shall be vested exclusively in the Governor-General.

On the 20th day of February, 1919, the Legislature adopted Act 2747 entitled "An Act to amend in certain particulars Act Numbered 2612 entitled 'An Act Creating the Philippine National Bank'." That portion of Section 5 of Act 2612, relating to the voting power of the Governor-General, was amended so as to read as follows: "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a committee con-

sisting of the Governor-General, the President of the Senate and the Speaker of the House of Representatives." It will be noted that the voting power, in said amendment (Section 4, Act 2747), of the stock controlled by the Government, is vested exclusively in a committee consisting of the Governor-General, the President of the Senate and the Speaker of the House of Representatives.

On the 30th day of January, 1921, the Legislature adopted Act 2938, entitled "An Act to amend Act Numbered 2612, entitled 'An Act Creating the Philippine National Bank,' as amended by Act Numbered 2747." By said Act 2938 that part of Section 4 of Act 2747 was amended so as to read as follows: "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands, shall be vested exclusively *in a Board*, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate and the Speaker of the House of Representatives." It will be noted that the phrase "in a committee" of Section 4 of Act 2747 was changed to the phrase "in a Board," which shall be a "Board of Control," composed of the Governor-General, the President of the Senate and the Speaker of the House of Representatives.

By Section 3 of Act 2938 the National Bank was authorized to increase its capital stock from ₱20,000,000.00, Philippine currency to ₱50,000,000.00, Philippine currency, and for that

purpose was authorized to make a new issue of 300,000 shares of stock. Section 4 of said Act (2938) provided that the Government of the Philippine Islands not later than June 30, 1921, shall purchase all remaining shares of the first issue (twenty million) and part of those of the second issue (fifty million) to the aggregate number of not less than 133,000, and appropriation was made in said Act for the purchase of the additional shares of stock.

Said Acts 2612, 2747 and 2938 were further amended by Acts Nos. 3033 and 3174. Said last two amendments, however, in no way attempted to alter or change the method of voting the stock held by the Government. It may be noted, however, that by Act 3174 the capital stock of the Philippine National Bank was reduced to 100,000 shares at the par value of ₱100.00, which number should include the shares held by the public. It was further provided in said last Act that the Bank may purchase the shares held privately at the price at which they were quoted on the date of the registration of the sale in the books of the Bank, provided that price did not exceed their value at par and that thereafter no stock of said Bank should be sold to the public.

Returning now to said Act 2612, creating the Philippine National Bank, we find in subparagraph (f) of Section 2 a provision which authorizes the said Bank to exercise the general powers mentioned in the Corporation Law (Act 1459) in so far as they

are not inconsistent or incompatible with the provisions of that Act. Subparagraph (f) is also carried forward and made a part of Section 1 of Act 2747. The provisions of said subparagraph (f) are also included as a subparagraph of Section 1 of Act 2938.

The charter of the Philippine National Bank (Section 20, Act 2612; Sec. 17, Act 2747; Sec. 16, Act 2938) provided that "the affairs and business of the National Bank shall be managed by a Board of Directors of seven members, except that, by virtue of Section 16 of Act 2938 the affairs and business of the National Bank shall be directed and its property managed and preserved by a Board of Directors consisting of nine members duly elected as provided in said Act, who shall be paid a per diem of ₱30.00 for each session of the Board of Directors attended by them." Section 17 of Act 2938 provides that "within the first twenty days after the approval of this Act, and annually on the first Tuesday after the first Monday in March, beginning with the year 1922, the stockholders shall meet to elect the members of the Board of Directors for the current year, each stockholder or proxy to be entitled to as many votes as he may have shares of stock, registered in his name on the 31st of January last preceding and held by him at the time of the election."

The business of the Philippine National Bank continued to be managed by its Board of Directors until late in 1926, when a question was raised concerning the right of the President of the Senate and

the Speaker of the House of Representatives to act with the Governor-General in voting the stock of said Bank. That question was referred to the Judge Advocate General of the United States Army as well as to the Attorney-General of the United States. Upon full consideration of the question, the Judge Advocate General and the Attorney-General each reached the conclusion that the President of the Senate and the Speaker of the House of Representatives were without authority in law to take part in the voting of the stock owned by the Government, for the reason that the particular provisions of the charter granting or creating said power was illegal and void, and that the participation of the President of the Senate and the Speaker of the House of Representatives in voting said stock was an illegal encroachment upon the powers of the Executive Department of the Government. Upon receiving said opinion, the Governor-General, evidently for the purpose of avoiding public criticism that he was permitting an illegal and void law to be enforced and, if possible, impeachment proceedings for a failure or refusal on his part to comply with the law of the land, issued an executive order, known as Executive Order No. 37. Said Executive Order No. 37 provides:

"Whereas it is held in an opinion of the Judge Advocate General of the United States Army, confirmed by an opinion of the Attorney-General of the United States, received at the Office of the Executive, November seventh, nineteen hundred and

twenty-six, that the provisions of the statutes passed by the Philippine Legislature creating a 'Board of Control' or 'Committee' and enumerating the duties and powers thereof, with respect to certain corporations in which the Insular Government is the owner of stock, are nullities; that the remaining portions of said statutes are valid; that the duties imposed by said statutes upon said Board or Committee are executive in their nature, and subject to the provisions of the Organic Act relating to the executive functions; that said executive duties and powers may be performed; as in other cases not specifically provided for by law.

"Now, therefore, acting under authority of said opinions, the duties and powers heretofore exercised by said 'Board of Control' or 'Committee' shall, from and after this date, be exercised solely by the Governor-General pursuant to the executive power vested in him by the Organic Act."

Notice of said executive order was duly and timely given by the Governor-General to the President of the Senate and the Speaker of the House of Representatives. The Governor-General further notified the President and Speaker that "he would thereafter exercise exclusively the duties and powers" with reference to the voting of the stock held by the Government of the Philippine Islands in the Philippine National Bank.

At the time of the issuance of said Executive Order No. 37 the Government of the Philippine Is-

lands owned practically all of the stock of the Philippine National Bank. The President of the Senate and the Speaker of the House Representatives protested against the alleged assumed authority on the part of the Governor-General to vote said Government stock, and insisted upon their right to participate in the voting of the same.

Later, and without going into great detail, a meeting of the stockholders was called for the purpose of electing and removing members of the Board of Directors of said Bank, and a special meeting of the stockholders was held for that purpose. The meeting was attended by twenty-six private persons owning and representing the owners of ninety-four of the privately owned shares of the Bank, and by the Governor-General personally, assuming the right to attend the meeting in the name and on behalf of the Government of the Philippine Islands and to vote the shares of stock of the Bank owned by that Government. Neither the President of the Senate nor the Speaker of the House of Representives attended the meeting; but they wrote a letter protesting against it, upon the ground that the Governor-General alone has no right to represent the Government of the Philippine Islands in relation to the exercise of the voting power of its stock in the Bank. Whereupon the President of the Bank, acting as Chairman of the meeting, ruled that he could not recognize the right of the Governor-General to vote the Government stock without the concurrence of the

President of the Senate and the Speaker of the House of Representatives, and therefore ruled that a quorum was not present and for that reason the special meeting adjourned. Against the ruling of the Chairman that a quorum was not present and his declaration that the meeting had adjourned, the Governor-General protested and insisted that a quorum was present. Thereupon the President of the Bank and several of the private shareholders, including the Vice-President of the Bank, left the room.

Immediately thereafter the Governor-General and the other stockholders, twenty in number, remained and immediately organized the special meeting by the election of a Chairman *pro tempore* and a Secretary *pro tempore* and proceeded with the business for which the special meeting had been called. After the meeting had thus been organized, by unanimous vote taken by written ballots, it was determined: (a) to remove Directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia; (b) to amend the by-laws of the Bank by striking out Section 51 thereof; and (c) to elect Manuel Yriarte, John Gordon, A. Gideon and Leon M. Heras to fill the vacancies created by the resignation of Director Gideon and the removal of the other three Directors above named. And, accordingly, Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia were removed as Directors of said Bank, and Manuel Yriarte, John Gordon, A. Gideon, Leon M. Heras were duly elected as members of the Board of Direc-

tors of said Bank. Later the said Leon M. Heras resigned.

On January 21, 1927, a regular meeting of the Board of Directors of the Philippine National Bank was held at its office, and at which meeting Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia presented themselves. So likewise did Manuel Yriarte, John Gordon and A. Gideon present themselves at the place of the meeting, produced their certificate of election and made demand that they be permitted to participate in said meeting as members elect of the Board of Directors of the Philippine National Bank; that Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia and each of them withdraw from the meeting and cease to exercise or attempt to exercise any of the duties and powers as members of said Board. The President of the Bank, acting as President of said Board of Directors then present and presiding, refused to recognize the right of Manuel Yriarte, John Gordon and A. Gideon as members of said Board, but then and there recognized Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia and each of them as members of the Board. The said Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia and each of them ever since January 17, 1927, have continued to exercise and do still exercise the functions of the offices of Directors of the Philippine National Bank and claimed to be entitled to do so, while the said Manuel Yriarte, John Gordon and A. Gideon and each of

them claimed that they were legally and lawfully elected by the majority of the stockholders and that they are now entitled to said offices held adversely to them by the said respondents. For that reason the present action of quo warranto was brought by the Government of the Philippine Islands in relation of Manuel Yriarte, John Gordon and A. Gideon for the purpose of determining whether they are entitled, by virtue of their election, to act as members of the Board of Directors of the Philippine National Bank; and whether or not the respondents Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia should not be removed and altogether excluded as members of said Board.

Considering the foregoing facts we have the question squarely presented, whether the persons elected, Manuel Yriarte, John Gordon and A. Gideon, by the unanimous vote at the stockholders' meeting have been duly and legally elected Directors of the Philippine National Bank. No question is presented with reference to the election of any other person. No other persons were elected. No opposition at the time of the election was made to the election of Manuel Yriarte, John Gordon and A. Gideon. The special meeting was regularly and duly called. It was legally held. Manuel Yriarte, John Gordon and A. Gideon were elected without opposition. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia simply contend that they were illegally removed and, inasmuch as they were illegally removed,

they contend that they have a right to continue to act as members of the Board of Directors.

Even granting for the purpose of the argument that the President of the Senate and the Speaker of the House of Representatives had a right to participate in voting, as members of the Board of Control, the stock belonging to the Government, they were not present at the meeting even though due notice had been given them. They were not represented by proxy. It is difficult now to understand upon what theory they base their right to vote or to participate in voting the stock of the Government when they were not present. There is nothing in the law which defines how the stock shall be voted by the Board of Control when there is a difference of opinion among its members. And in the absence of such regulation, and merely for the purposes of the argument, we are of the opinion that the members of said Board present would have a right to vote the stock held by the Government. Upon that opinion, however, we are not quite ready to rest our conclusion.

Considering the right of the stockholders to remove and elect members of the Board of Directors, and considering that at a special meeting of the stockholders called for that purpose, Manuel Yriarte, John Gordon and A. Gideon were duly and legally elected without opposition, and that Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia were legally and lawfully removed without opposition, we are at a loss to understand how can there be any

legal question concerning the right of the former to occupy the positions of the latter as members of the Board of Directors of the Philippine National Bank. These facts alone should be sufficient upon which to base the conclusion that the petitioners should be duly declared elected as members of said Board and that the respondents should be ousted and altogether excluded therefrom.

The general questions involved in the present case have heretofore been discussed in the case of the Government of the Philippine Islands vs. Milton E. Springer, et al., G. R. No. 26979. Some of the questions discussed there we deem it advisable to repeat here, and the first question relates to the:

RIGHT OF THE LEGISLATIVE DEPARTMENT OF THE GOVERNMENT TO EXECUTE OR ASSIST IN THE EXECUTION OF ITS LAWS

In relation with that subject it will be remembered that the Legislative Department of the Government of the Philippines adopted the law creating the charter of the Philippine National Bank. The Legislative Department of the Government in said charter provided a method by which it, through the President of the Senate and the Speaker of the House of Representatives, should assist in the execution of that law. Reference is hereby made to the decision in Cause G. R. No. 26979 for a general discussion of the question of the right of the legislative department of the government to execute or assist in the

execution of its law. Many authorities are there cited, supporting the doctrine that the legislative department of the government has no authority to do so.

In the present case the Legislature provided, by Section 4 of Act 2612, "that the voting power of all stock purchased directly by the Philippine Government as an investment from the general funds of the Government x x x x, shall be vested exclusively in the Governor-General." Said Section 4 was amended by Section 4 of Act 2747 so as to read:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

Said Section 4 of Act 2747 was further amended by Section 4 of Act 2938 so as to read:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

The law is not clear, showing why the word "committee" was changed to a "Board of Control", unless the reason is found in further provisions of said Act (2938) which give the "Board of Control"

further and other rights in the management of the Philippine National Bank, than the mere participation in the voting of stock. Said Act (2938) attempts to give the President of the Senate and the Speaker of the House of Representatives participation in the execution of the law governing the Philippine National Bank in many instances. Their participation in the execution of said law is found in subparagraph (f) of Section 10, in the proviso found in Section 14, in Section 18, in Section 20, in Section 22, in Section 23, in Section 44 and in Section 45 of said law. A reading of said sections shows that the Board of Directors is limited in their authority in many ways. There are many things which the Board of Directors had been authorized theretofore to do, which it was not permitted to do under Act 2938, except with the approval of the "Board of Control". Thus it will be seen that the phrase "Board of Control" as used in Section 4 of Act 2938 included many powers which had not therefore been given to the committee, and that the President of the Senate and the Speaker of the House of Representatives, as members of the "Board of Control", were not only given authority to participate in the execution of said law with reference to the voting of the stock, but in a dozen other ways, in the management and control of the Bank.

Basing our conclusions upon the arguments adduced in the case of the National Coal Company (G. R. No. 26979), we are forced to the conclusion that,

that portion of Act 2938 which permits the President of the Senate and Speaker of the House of Representatives to participate in the execution of said law in the manner therein permitted, is illegal and void.

Another reason might be given why said particular provisions are null and void is, that there is nothing in the title of the Act which in the slightest degree indicates that such powers had been conferred upon the "Board of Control". The question relating to what the title of an Act must contain has already been discussed in the case of the National Coal Company (G. R. No. 26979). There is nothing in the title which indicates to the Board of Directors, the stockholders or the public, that it was the intention of the Legislature to participate in the control of the Philippine National Bank in the manner provided in said Act 2938. The Jones Law prohibits the inclusion in a law of more than one subject and requires that, that subject shall be expressed in the title of the bill.

POWER OF THE LEGISLATIVE DEPARTMENTS OF GOVERNMENTS UNDER THE AMERICAN FLAG

Some one has said that the powers of the legislative department of the government, like the boundaries of the ocean, are unlimited. In constitutional governments, however, as well as governments acting under delegated authority, the powers of each

of the departments of the same are limited and confined within the four walls of the constitution or the charter, and each department can only exercise such powers as are expressly given and such other powers as are necessarily implied from the given powers. The constitution is the shore of legislative authority, against which the waves of legislative enactment may dash, but over which they cannot leap.

Under a constitutional government, where the different departments of government are separated and each given a definite field within which to exercise its functions, it may be said that each department has no authority to enter upon the field of another department and attempt to perform the duties therein. The power of the legislature is the power to legislate only and to make such investigations as are necessary for that purpose. In the present case and under the charter of the Philippine National Bank the "Board of Control" has entered, through the President of the Senate and the Speaker of the House of Representatives as representatives of the Legislative Department of the Government, upon the field of the Executive Department for the purpose of assisting in the execution of laws and with the pretended majority of said Board, are attempting to take the execution of the law into their own hands. That cannot be permitted where the different departments of government are given separate and distinct fields within which to operate.

What was said in the case of the National Coal Company (G. R. No. 26979) in relation to:

(a) Powers of the Legislature granted by the Philippine Charter;

(b) The authority of the Philippine Legislature to enact laws is a delegated authority;

(c) The existing sovereign in the Philippine Islands;

(d) The right of the Philippine Legislature to appoint Committees and Boards of Control to assist in the execution of the laws;

is hereby made a part of this decision. Those questions are fully discussed in the decision in said case of the National Coal Company.

THE POWER AND AUTHORITY OF THE EXECUTIVE UNDER THE CHARTER OF THE PHILIPPINE GOVERNMENT

The charter of the Philippine Government provides "that the supreme executive power shall be vested in an executive officer whose official title shall be the Governor-General of the Philippine Islands." Stronger language could not have been used for the purpose of conferring upon the Governor-General of the Philippine Islands the full executive powers of the Government. There is nothing in any of the provisions of the charter of the Philippine Government which authorizes or permits the "supreme executive power" to divide its responsibility for the

faithful execution of the laws of the Philippine Islands with any other department, legislative or judicial, or with any of the bureaus of the Government. All executive functions of the Philippine Government are expressly under the direction and control of the Governor-General. The Governor-General, as the supreme executive power, is held responsible for the faithful execution of the laws of the Philippine Islands. For the faithful execution of the laws he alone has the ultimate responsibility. He is not justified in allowing a division of that authority. Mr. Baker, who was Secretary of War of the United States at the time the charter of the Philippine Islands was adopted, and who perhaps was more familiar with its meaning and purpose than any other one person, wrote a letter to Governor-General Harrison, in which he said in general terms: "It would seem to be the part of wisdom for the President and the Governor-General to admit of no encroachments on those powers placed in their hands."

A feeble executive in the administration of his department implies a feeble execution of the laws of the government. A feeble execution is but another phrase for a bad execution; and a Government ill executed, whatever it may be in theory, must be, in practice, a bad Government. Delay in the administration of the laws will lead to injustice, dissensions, turmoils and disorder and a possible loss of

the property of the state and the deprivation of the rights of the citizens.

DUTY OF THE GOVERNOR-GENERAL WHEN ADVISED OF THE ILLEGALITY OF A LAW —HE MAY DISREGARD IT OR FORMULATE A PROPER ISSUE TO BE PRESENTED TO THE COURTS CONCERNING ITS LEGALITY

It is the sworn duty of the Governor-General of the Philippines to execute the laws. That duty, however, does not require him to execute *an illegal Act* of the Legislature. When he is advised by his legal department that a certain Act or any part thereof, of the Legislature is illegal and void, he may do one of two things: (a) he may disregard it and refuse to execute it, or (b) he may formulate an issue upon the alleged illegality and have that question presented to the courts for solution. He is at liberty to take either course. He is acting within his powers whichever of these courses he elects to take. To disregard an illegal and void Act of the Legislature is neither tyranny nor a violation of his sworn duty. It would be a violation of his sworn duty to enforce or permit the enforcement of an illegal law.

RIGHT OF DIFFERENT DEPARTMENTS OF GOVERNMENT TO CONSTRUE POWERS GRANTED UNDER THE CONSTITUTION OR CHARTER

It needs no citation of authorities to sustain the doctrine that each department of government, in-

vested with constitutional or charter powers, must, in the performance of their legal duties, in many instances be the judge of their powers, or otherwise they could not act. Such interpretation of their powers is not exclusive, however. The parties aggrieved may resort to the courts for a judicial interpretation.

EXCLUSIVE DUTY OF THE GOVERNOR-GENERAL TO PROTECT THE PROPERTY OF THE GOVERNMENT

It is the duty of the Governor-General, as the supreme executive power, to protect the property of the Government. If he, by negligence or inattention to that responsibility permits the property of the Government to be wasted, destroyed or lost, he subjects himself to the danger of impeachment. His responsibility in that regard is then one of great seriousness. He should not supinely disregard it. While the legislative department of the Government may adopt laws for safeguarding or protecting the property, public and private, it cannot intervene in the enforcement of such law. The legislative department would thereby be taking part, not only in the enactment of laws but in the execution of the same, which is not permitted under the American Constitution and system of Government.

WHAT HAS BEEN DONE BY LEGISLATIVE DEPARTMENT FURNISHES NO NECES-

SARY CRITERION AS TO ITS REAL POWER

Our attention has been called to many laws in which the Legislative Department of the Government has either directly or indirectly attempted to participate in the enforcement of the same. The fact that such laws have been enforced, without question, furnishes no criterion, nor is the Government estopped from raising the question of the legality of such acts in subsequent actions. The mere fact that legality of acts have never been questioned and their legality has been passed *sub silentio* does not create a conclusive presumption that they were in fact adopted within the powers of the Legislative Department of the Government. The fact that a statute has been accepted as valid and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing on its validity where the question is properly raised and presented.

McGirr vs. Hamilton et al., 30 P. R. 563, and cases cited.

LEGALITY OF THAT PROVISION OF ACT 2747, AS AMENDED BY ACT 2938, CREATING THE "BOARD OF CONTROL"

In addition to the contention that the Legislature, by virtue of the provisions of Acts 2747 and 2938, not only attempted to legislate but to participate in the execution of its laws, there is still ano-

ther objection to the legality of that provision of said Acts which creates the "Board of Control". One of the inhibitions against the power of the Philippine Legislature is found in one of the paragraphs of Section 3 of the Jones Law. Said paragraph provides: "That no bill (public or private) which may be enacted into law shall embrace more than one subject and that subject shall be expressed in the title of the bill." From a reading of the provisions of the charter of the Philippine National Bank in relation with the title of said law, it will be seen that in each of said Act more than one subject is covered. There is nothing in the title of the Acts which gave even the members of the Legislature the slightest idea that it was adopting a law which contained a provision, through which, the Legislature itself by means of the "Board of Control", should participate directly in their execution.

The purpose of that legislative restriction and the evils sought to be remedied thereby are clearly stated by Mr. Sutherland, now an Associate Justice of the Supreme Court of the United States. In Section 111 of his valuable work on Statutory Construction he says:

"In the construction and application of this constitutional restriction the courts have kept steadily in view the correction of the mischief against which it was aimed. The object is to prevent the practice, which was common in all legislative bodies where no such restriction existed, of embracing in the same bill

incongruous matters having no relation to each other or to the subject specified in the title, by which measures were often adopted without attracting attention. Such distinct subjects represented diverse interests, and were combined in order to unite the members of the legislature who favor either in support of all. These combinations were corruptive of the legislature and dangerous to the State. Such *omnibus* bills sometimes included more than a hundred sections on as many different subjects, with a title appropriate to the first section, 'and for other purposes.'

"The failure to indicate in the title of the bill the object intended to be accomplished by the legislation often resulted in members voting ignorantly for measures which they would not knowingly have approved; and not only were legislators thus misled, but the public also; so that legislative provisions were steadily pushed through in the closing hours of a session, which, having no merits to commend them, would have been made odious by popular discussion and remonstrance if their pendency had been seasonably announced. The constitutional clause under discussion is intended to correct these evils; to prevent such corrupting aggregations of incongruous measures, by confining each act to one subject or object; to prevent surprise and inadvertence by requiring that subject or object to be expressed in the title."

The authorities are, to all intents, uniform that

this constitutional requirement is mandatory and not directory.

Central Capiz vs. Ramirez, 40 P. R. 883.

Inasmuch as the body of said Acts contains a provision to which no reference is made in the title, in view of the well established authorities, we are forced to the conclusion that, that provision creating the "Board of Control" is illegal and void. That illegality, however, is one which may be separated from the rest of the Acts without affecting the legality of the other provisions, except those which permit the "Board of Control" to interfere or to assist in controlling the operations of the Philippine National Bank as indicated above.

THE "BOARD OF CONTROL" AND MEMBERS THEREOF, AS PUBLIC OFFICERS OF THE GOVERNMENT

Considering the view which we have taken concerning the legality of the creation of the "Board of Control", it is a matter of very little importance whether the members of said Board, in the performance of their duties, are public officers or not. Reference is hereby made to a further discussion of this particular subject in the case of the National Coal Company (G. R. No. 26979).

THE RIGHT OF THE COURT TO DECIDE THE QUESTION, WHAT ARE THE RESPECTIVE POWERS OF THE DIFFERENT

DEPARTMENTS OF GOVERNMENT, AND THE LEGALITY OF LAWS

It is conceded by all of the eminent authorities upon constitutional law that the courts have authority to finally determine what are the respective powers of the different departments of government.

"The question of the validity of every statute is first determined by the legislative department of the Government, and the Courts are not justified in adjudging a statute invalid in the face of the conclusions of the legislature, when the question of its validity is at all doubtful. The courts will assume that the validity of a statute was fully considered by the legislature when adopted. Courts will not presume a statute invalid unless it clearly appears that it falls within some of the inhibitions of the fundamental laws of the state. The wisdom or advisability of a particular statute is not a question for the courts to determine. If a particular statute is within the constitutional power of the legislature to enact, it should be sustained whether the courts agree or not in the wisdom of its enactment. If the statute covers subjects not authorized by the fundamental laws of the land, or by the constitution, then the courts are not only authorized but are justified in pronouncing the same illegal and void, no matter how wise or beneficent such legislation may seem to be. Courts are not justified in measuring their opinions with the opinion of the legislative department of the Gov-

ernment, as expressed in statutes, upon questions of the wisdom, justice and advisability of a particular law. In exercising the high authority conferred upon the courts to pronounce valid or invalid a particular statute, they are only the administrators of the public will, as expressed in the fundamental law of the land. If an act of the legislature is to be held illegal, it is not because the judges have any control over the legislative power, but because the act is forbidden by the fundamental law of the land and because the will of the people, as declared in such fundamental law, is paramount and must be obeyed, even by the legislature. In pronouncing a statute illegal, the courts are simply interpreting the meaning, force, and application of the fundamental law of the state."

Case vs. Board of Health, 24 P. R. 250, 251.

The judicial department of the Government may examine every law enacted by the legislative branch of the Government when the question is properly presented for the purpose of ascertaining:

(a) Whether or not such law came within the subject-matter upon which the legislative branch of the Government might legislate; and

(b) Whether the provisions of such law were in harmony with the authority given the legislature.

If the judicial branch of the Government finds (a) that the legislative or executive branches of the Government had authority to act upon the particu-

lar subject, and (b) that the particular law contained no provisions in excess of the powers of such department and the acts of the executive were within his powers, then that investigation, or that conclusion, conclusively terminates the investigation by the judicial department of the Government.

SOLICITUDE OF THE GOVERNMENT OF THE UNITED STATES AND ITS REPRESENTATIVES IN THE PHILIPPINE ISLANDS FOR THE WELFARE AND WELL BEING OF THE INHABITANTS

No Government, past or present, has more carefully and watchfully guarded and protested, by law, the individual rights of life and property of the citizens of the Philippine Islands than the Government of the United States and its representatives. Each of the three departments of the Government has had separate and distinct functions to perform in this great labor. The history of the Philippine Islands, covering a period of more than a quarter of a century, discloses the fact that each department has performed its part well. No one department of the Government can or even has claimed, within its discretionary and legal powers, a greater zeal than the others in its desire to promote the welfare of the individual citizen. They are all joined together in their respective spheres and departments, harmoniously working to maintain good government, peace, and order to the end that the rights of each citizen

in his life and property be equally protected. No one department can claim that it has a monopoly of these benign purposes of the Government. Each department has an exclusive field, under the law, within which it can perform its part, within certain discretionary limits. No other department can claim a right to enter these discretionary and legal limits and assume to act there. No presumption of an abuse of these discretionary powers by one department will be considered, permitted or entertained by another. Such conduct on the part of one department, instead of tending to conserve good government and the rights of the people, would directly tend to destroy the confidence of the people in the Government and to undermine the very foundations of the Government itself.

INTERVENORS

The intervenors contend that the said Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia had been illegally removed from the Board of Directors of the Philippine National Bank for the reason that there existed no valid and lawful reason for their removal; that no cause had been given or charges preferred against them which would justify the action taken by the stockholders; that the removal of said respondents was purely an arbitrary act on the part of the Governor-General and the other private stockholders, and was done for the sole purpose of raising the issue and formulating

a moot case as regards the Philippine National Bank on the legality of Section 4 of Act 2612 as amended by Acts 2747 and 2938; that the attempted removal of said Directors will inevitably affect the management and administration of the business and affairs of the Philippine National Bank and will result in the impairment of its credit, reputation and stability as a financial institution, to the irreparable damage of the intervenors and other stockholders of said Bank.

In reply to that argument, it may be said:

(a) That the meeting of the stockholders for the purpose of removing said Directors was duly and legally called;

(b) That the resolution of the Board of Directors, calling said meeting of the stockholders for the purpose indicated, was within the authority of said Board;

(c) That notice of the particular purpose of the meeting was given;

(d) That in pursuance of the regular call for the special meeting of the Board of Directors, the meeting was properly held;

(e) That no protest was made even by the respondents or by any other of the stockholders of the Philippine National Bank to the holding of said meeting; and

(f) That under the provisions of Section 34 of Act 1459 the stockholders were authorized to remove

said Directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia.

After a full consideration of the law and facts, in relation with the arguments of the petitioners and the intervenors, we are fully persuaded that there exists no lawful reason for declaring that the stockholders at said special meeting had not acted within their power and authority in the removal from the Board of Directors of the Philippine National Bank of said Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia. The prayer of the petition, therefore, of the intervenors is hereby denied.

CONCLUSIONS

For all of the foregoing reasons the petition for the extraordinary legal writ of quo warranto should be granted, and that Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia are each illegally and unlawfully occupying the position of member of the Board of Directors of the Philippine National Bank and should be ousted and altogether excluded therefrom; that Manuel Yriarte, John Gordon and A. Gideon have been duly and legally elected as members of the Board of Directors of the Philippine National Bank, and judgment is rendered that they be immediately inducted into said position, to take charge thereof and to perform the duties incumbent upon them as members of the Board of Directors. The demurrer is overruled. Considering the petition and demurrer in relation with the stipulated facts, there

seems to be no reason for permitting an answer to be filed. And without any finding as to costs, it is so ordered.

(Sgd.) E. FINLEY JOHNSON,

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, *Plaintiff,* *vs.* GREGORIO AGONCILLO, BALDOMERO ROXAS and CATALINO LAVADIA, *Defendants,* GERONIMO SANTIAGO, VICTOR BUENCAMINO, GREGORIO SINJIAN, EUFEMIA TAPIA, MARIA SALUD TAPIA, LADISLAO TAPIA, and DIONISIO JAKOSALEM, as Administrator of the Estate of Pedro Cui, *Intervenors.*	"QUO WARRANTO" G. R. No. 27225 Justices Present: Avaceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Johns, Romualdez and Villa-Real, JJ.

AVANCEÑA, C. J., and JJ. VILLAMOR and VILLA-REAL, *dissenting*:—

Our dissent here is based on the same grounds as our dissent in the companion case, the Government of the Philippine Islands v. Springer, et al., G. R. No. 26979, particularly on the ground that Section 4 of Act 2612, as amended by Section 1 of Act 2747, by which the Board of Control has been created, being constitutional and valid, the Governor-General alone, without the concurrence of the President of the Senate and the Speaker of the House of Representatives, who with him compose the said Board, cannot

vote the stock of the Government in the Philippine National Bank, inasmuch as the voting of such stock is a mere delegation of power by a stockholder for a private purpose (The Bank of the United States v. The Planters Bank of Georgia, 6 L. Ed. 244; The Bank of Kentucky v. Wister, et al., 7 L. Ed. 318) the exercise of which requires discretion and judgment (18 C. J. 472, note 3.a).

The complaint should be dismissed.

(Sgd.) RAMON AVANCEÑA.
(Sgd.) IGNACIO VILLAMOR.
(Sgd.) ANTONIO VILLA-REAL.

On the 4th day of April, 1927, the defendants presented the following:

(CAPTION AND TITLE OMITTED)

EXCEPTION AND MOTION

Now come the above-named defendants and except to the decision rendered by this Court on the 1st day of April, 1927, in the above-entitled action, and also except to the final judgment entered therein.

Notice is hereby given that the defendants intend to petition the Supreme Court of the United States for a writ of certiorari for the revision of the decision and judgment of this Court; and said defendants hereby make application for the retention of the record in said cause in this Court pending the preparation and certification of said record and the

presentation of said petition to the Supreme Court of the United States.

The grounds, *inter alia*, upon which the defendants intend to petition the Supreme Court of the United States for a writ of certiorari for the revision of the decision and judgment of this Court hereinabove referred to are:

(1) That the decision and judgment of this Court are contrary to the law and the evidence;

(2) That in this action a statute of the United States is involved.

The defendants also pray for a stay of enforcement of the judgment of this Court during the pendency of the application for a writ of certiorari and of the proceedings to be had in the Supreme Court of the United States.

Manila, April 4, 1927.

JOSE ABAD SANTOS
ARANETA & ZARAGOZA
CHARLES E. TENNEY
CAMUS, DELGADO & RECTO
MARIANO H. DE JOYA
By (Sgd.) JOSE A. SANTOS,
Attorneys for the Defendants,
317-321 Masonic Temple,
Manila.

COPY RECEIVED this
4th day of April, 1927.
(Sgd.) DELFIN JARANILLA,
Attorney-General, Manila.

On the 4th day of April, 1927, the plaintiff filed the following:

(CAPTION AND TITLE OMITTED)

MEMORANDUM OF PLAINTIFF IN OPPOSITION TO THE DEFENDANTS' APPLICATION FOR STAY OF EXECUTION

Broad considerations of public policy prohibit the granting of a stay of execution in this case. The effect of the decision herein is to hold that the voting of the government-owned stocks in the Philippine National Bank is exclusively an executive function, and that the Legislature may not absorb to itself or its officers any share of that voting power. Under existing legislation that function is vested in the Governor-General alone. To grant a stay would, in effect, operate to interfere with the Chief Executive of these Islands in the discharge of that executive function.

Furthermore, the administration of, and control over, millions of pesos of Government money, invested in the stocks of Government-owned corporations, are involved in the decision herein. It would be in the last degree impolitic to leave that administration and control in the hands of persons who, as the court has found, are strangers to these corporations and are usurping the powers of directors thereof. That administration and control involves problems that arise from day to day, the solution of which should

not be left, in whole or in part, to men who are without authority to act in behalf of those corporations. The proper administration of this property demands that an immediate end be put to the present uncertainty and chaos.

The authorities hold that, in the absence of express statutory provision otherwise, a judgment of ouster in quo warranto proceedings is self-executing, requiring no process to make it effective, and that the filing of a supersedeas bond, will operate, at the most, to stay execution for costs.

Thus in Foster v. Kansas, 112 U. S. 201, 28 L. Ed. 629, 630, the court said:

> *"The judgment operated of itself to remove Foster and leave his office vacant. It needed no execution to carry it into effect."*

In Faucett v. Superior Court, 15 Wash. 342, 55 Am. St. Reports 894, the court said:

> "The question then is, What is the effect and nature of a judgment of ouster from a public office? It seems to be the settled rule that *such a judgment divests the person ousted of all official authority whatever, and fully and completely excludes him from the office as long as the judgment remains in force.* High on Extraordinary Legal Remedies, 2nd Ed., Sec. 756; Mechem on Public Officers, Sec. 497.
>
> "And a judgment in favor of a relator in a proceeding by information to try title to public office *is, from its very nature, self-executing. By its own force, and without the aid*

> *of process or further action of the court, it accomplishes the object sought to be attained.* So far, then, as such a judgment is concerned, there is nothing upon which a stay bond can operate, except an execution for costs, where, as in this case, costs are awarded to the relator. x x x x The result of permitting such a judgment to be suspended by an appeal and stay bond would, for obvious reasons, in many instances, in effect, completely destroy the relator's remedy. x x x x The following authorities are in point on the questions here involved: People v. Stephenson, 98 Mich. 218; State v. Woodson, 128 Mo. 497; Fylpaa v. Brown County (S. D. April 20, 1895), 62 N. W. Rep. 962; Allen v. Robinson, 17 Minn. 113; Jayne v. Drorbaugh, 63 Iowa 711; State v. Meeker, 19 Neb. 444; Walls v. Palmer, 64 Ind. 493; Elliot on Appellate Procedure, Secs 392, 393."

In State v. Wilson, 121 N. C. 425, 480, 28 S. E. 554, 565, the Court, in passing upon two motions, one by the defendant to recall a writ of execution issued on a judgment of ouster in quo warranto proceedings, and the other to set aside the supersedeas proceedings, said—

> "We are also of the opinion that the judgment of this court *ex propio vigore*, placed the relator in possession of the office at the time judgment was filed. He having qualified, no process was necessary for that purpose.x x x The judgment took effect immediately upon

being filed, and is not superseded by the subsequent writ of error, regular or irregular. Foster v. Kansas, 112 U. S. 205, 5 Sup. Ct. 8, 97. x x x x"

In People vs. Reimberg (1914), 263 Ill. 536, 105 N. E. 715, Ann. Cas. 1915 C 343, in a mandamus proceeding to compel recognition of the relators as members of a board of education during the pendency of an appeal in quo warranto proceedings in which they had been successful, the court said—

"It is further contended that to grant the writ in this case would prejudicially affect the rights of the parties in the quo warranto proceeding pending on appeal in the Appellate Court of the First District. The judgment of the Superior Court *is self-executing and requires no process to enforce it. An appeal bond or supersedeas bond will not operate to suspend such a judgment.* Barnes v. Chicago Typographical Union, No. 16, 232 Ill. 402, 83 N. E. 932, 122 Am. St. Rep. 129, 14 L. R. A. (N. S.) 1150; 17 Enc. of Pl. & Pr. 489; 20 Enc. of Pl. & Pr. 1244."

See also—

Olmstead v. Distilling Co. 73 Fed. 44,

Fulgham v. Johnson, 40 Ga. 164,

Welch v. Cooks, 7 How. Prac. 282.

Indeed, it is held that any attempt to resist such a judgment during the pendency of an appeal constitutes a contempt of the court rendering the judgment. Thus in State v. Wilson, *supra* the Court said—

"The relator being in office by virtue of the judgment of this court, any attempt by the

> defendant to exercise its functions, or to interfere with the full and free exercise thereof by the relator, and any attempt by any one else to interfere by alleged legal process or otherwise, unless and until the supreme court of the United States shall reverse the judgment of this court will be a contempt of this court."

Our opponents may argue that the foregoing cases deal with trials of title to public office, and not to corporate offices, and that different considerations apply to the latter. Our answer is that our statute makes no distinction. "Public civil office" and "office in a corporation" are dealt with as in pari materia, in subparagraph 1 of Sec. 197 of our Code of Civil Procedure. The reason is obvious. The purpose of a judgment of ouster from office in a corporation would, in many instances, be defeated, were a stay granted pending proceedings for the review thereof, just as would the purpose of a judgment of ouster from public office.

Our opponents may appeal to the provisions of Rule 42 of the Rules of this Court in support of their application for a stay of execution. Our answer is that those provisions have no application whatever to judgments which are, in their very nature, self-executing, as is the judgment in this case.

We submit, in view of the foregoing considera-

tions, that the application of the defendants for a stay of execution should be denied.

Manila, P. I., April 4, 1927.

Respectfully submitted,

(Sgd.) DELFIN JARANILLA,
Attorney-General.

(Sgd.) HUGH C. SMITH.
DEWITT, PERKINS & BRADY,
By (Sgd.) C. A. DEWITT,
Special Counsel for Plaintiff.

Received copy:

(Sgd.) JOSE A. SANTOS.

On the same date, to wit, the 4th day of April, 1927, the Court issued the following order:

"On consideration of the motions of counsel for the defendants to the cases of The Government of the Philippine Islands vs. Milton E. Springer, et al., No. 26979, and of The Government of the Philippine Islands vs. Gregorio Agoncillo, et al., No. 27225, excepting to the decisions rendered by this Court on the first day of April, 1927, and to the final judgments entered therein, and praying for stays of enforcement of the application for writs of certiorari and of the proceedings to be had in the Supreme Court of the United States; of the objections of counsel for the plaintiff in the above-mentioned cases to the granting of the application of the defendants for stays of execution; of the statements made at the hear-

ing; and of the law, decisions, and all pertinent arguments relating to the issue, the Court ordered that the exceptions be noted and that the prayer for stays be denied. Avanceña, C. J., and Villamor and Villa-Real, JJ., dissented, with regard to the stay of execution."

On the 11th day of April, 1927, the Clerk of the Court entered the following judgment:

(CAPTION AND TITLE OMITTED)

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the court upon the record, its decision and order for judgment having been filed on the 1st day of April, nineteen hundred and twenty-seven;

By virtue thereof it is hereby adjudged and decreed that the defendants are ousted and altogether excluded from the offices of directors of the Philippine National Bank which they are unlawfully holding, and that the three directors selected by the Governor-General shall be placed in possession of those offices, without costs.

(Sgd.) MANUEL M. DE HASAÑAS,
Deputy Clerk, Supreme Court, P. I.
In Charge of Manila Office.

The United States of America

PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

G. R. No. 27225

QUO WARRANTO

THE GOVERMENT OF THE PHILIPPINE ISLANDS
Plantiff,

VERSUS

GREGORIO AGONCILLO, BALDOMERO ROXAS AND CATALINO LAVADIA,
Defendants.

I,V. Albert, Clerk of the Supreme Court of the Philippine Islands do hereby certify that the foregoing ..... printed pages contain a true and correct transcript of the record of the case entitled The Government of the Philippine Islands, plaintiff, *vs.* Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, defendants, concerning quo warranto bearing No. 27225 of the docket of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this ..... day of ...., A. D., one thousand nine hundred twenty-seven.

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 21, 1927

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office Supreme Court, U. S.
FILED
SEP 28 1927
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

No. 564

MILTON E. SPRINGER, DALMACIO COSTAS AND ANSELMO HILARIO,
Petitioners,

VERSUS

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS AND BRIEF IN SUPPORT THEREOF.

JOSE ABAD SANTOS,
JAMES ROSS,
QUINTIN PAREDES,
CLARO M. RECTO,
Counsel for Petitioners.

Imp. NUEVA ERA

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. .....

MILTON E. SPRINGER, DALMACIO COSTAS and ANSELMO HILARIO,
Petitioners,

VERSUS

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
Respondent.

To the Honorable, the Supreme Court of the United States:

Your petitioners, Milton E. Springer, Dalmacio Costas and Anselmo Hilario, respectfully pray that a writ of certiorari may issue to review the judgment of the Supreme Court of the Philippine Islands rendered April 11, 1927, in the case therein entitled "The Government of the Philippine Islands, plaintiff, *versus* Milton E. Springer, Dalmacio Costas and Anselmo Hilario, defendants," being No. 26979 in said Court.

NATURE OF THE CASE

This action was originally brought in the Supreme Court of the Philippine Islands under section

2952 of the Compiled Acts of the Philippine Commission, for the purpose of ousting the defendants, the petitioners here, from the offices of directors of the National Coal Company. The gravamen of the complaint filed in this case was the alleged invalidity of that part of section 4 of Act No. 2705, as amended by Act No. 2822, of the Philippine Legislature, under and by virtue of which the defendants were elected directors of the National Coal Company.

Act No. 2705, amended as aforesaid, is entitled "An Act to Create the National Coal Company", and the relevant parts thereof are as follows:

> "SECTION 1. A company is hereby organized, which shall be known as the National Coal Company, the principal office of which shall be in the city of Manila, and which shall exist for a period of fifty years, from and after the date of the approval of this Act.
>
> "SEC. 2. The said company shall be subject to the provisions of the Corporation Law in so far as they are not inconsistent with the provisions of this Act, and shall have the general powers mentioned in said Act and such other powers as may be necessary to enable it to prosecute the business of developing coal deposits in the Philippine Islands, and of mining, extracting, transporting, and selling the coal contained in said deposits. Said company shall have priority of rights as regards the cutting and utilization of forest products for its own use in any public forests, in accordance with the Forest Law

and the regulations and instructions now in force or which may hereafter be issued with regard to the cutting, gathering, and transportation of forest products.

"SEC. 3. The capital of said company shall be three million pesos divided into thirty thousand shares of stock having a par value of one hundred pesos each, and no stock shall be issued at less than par nor except for cash.

"SEC. 4. The Governor-General, on behalf of the Government of the Philippine Islands, shall subscribe for at least fifty-one per centum of said capital stock, and the remainder may be offered to the public. Ten per centum of the value of all stock subscribed shall be paid at the time of the subscription, and the balance thereof shall be paid at such time as shall be prescribed by the Board of Directors. The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

"SEC. 5. The board of directors of the company shall consist of five members.

"SEC. 6. There is hereby appropriated out of the funds in the Insular Treasury not otherwise appropriated, such sum as may be necessary to pay for the stock of the National Coal Company to be acquired by the Insular Government: *Provided, however,* That the Insular Auditor shall not set up said sum on his books in full, but only such part or parts thereof as it may be necessary to invest for the development of the corporation created by this Act."

This act was passed by the Philippine Legislature, and approved March 10, 1917. It had been in

force for a number of years and acted upon by the executive officers of the Philippine Government, including the present Governor-General. By section 19 of the Philippine Autonomy Act all laws enacted by the Philippine Legislature are to be reported to Congress, which reserves power to annul them. The act under consideration was reported to Congress and has not been annulled.

The Supreme Court of the Philippine Islands (Chief Justice Avanceña and Justices Villamor and Villa-Real dissenting) held that section 4 of Act No. 2705, as amended, was invalid in so far as it purported to vest the voting power of the stock of the Philippine Government in the National Coal Company exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives; and that the Governor-General had authority to exercise solely the voting power of all such stock. The Court, therefore, gave judgment for the plaintiff.

MAIN POINT INVOLVED IN THE CASE

The main point in the case is whether that part of section 4 of Act No. 2705 of the Philippine Legislature, as amended by Act No. 2822 thereof, which purported to vest the voting power of the stock of the Philippine Government in the National Coal Company exclusively in a committee consisting of

the Governor-General, the President of the Senate, and the Speaker of the House of Representatives, is invalid as in conflict with the provisions of the Philippine Autonomy Act (Act of Congress of August 29, 1916), commonly known as the Jones Law.

REASONS FOR THE ALLOWANCE OF THE WRIT

It is urged that a writ of certiorari should issue for the following reasons:

1. A statute of the United States, to wit, the Philippine Autonomy Act, is involved.

2. This cause involves a question of the most vital importance arising under the Philippine Autonomy Act—a question more far reaching in its effect than the ones decided by this Honorable Court in Yu Kong Eng v. Trinidad, 271 U. S. 500, 70 L. ed. 1059; Alejandrino v. Quezon, 271 U. S. 528, 70 L. ed. 1071; Wright v. Ynchausti & Co., 71 (U. S.) L. ed. (Adv. 267); Ingenohl v. Olsen & Co., 71 (U. S.) L. ed. (Adv. 517); and Posadas v. City of Manila, No. 363, decided May 31, 1927.

3. The Supreme Court of the Philippine Islands failed to follow or give force or effect to the rulings and decisions of this Honorable Court on the legal propositions involved.

4. The question herein decided below adversely to your petitioners by a divided court, which in-

volves the legal and just construction and effect of important provisions of the Philippine Autonomy Act, should be authoritatively and finally adjudged by this Honorable Court upon and after a full presentation to the Court of the merits of the said question.

5. As more fully shown in the brief appended hereto, a full consideration of the case by this Honorable Court will tend to prevent costly and undesirable litigation, and promote justice to all concerned.

WHEREFORE, it is respectfully prayed that this petition for a writ of certiorari be granted.

JOSE ABAD SANTOS,
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QUINTIN PAREDES,
CLARO M. RECTO,
Counsel for Petitioners,
Masonic Temple Bldg., Manila, P. I.

GREGORIO ARANETA,
CHAS. E. TENNEY,
Of Counsel for Petitioners.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. .....

MILTON E. SPRINGER, DALMACIO COSTAS and ANSELMO HILARIO,
Petitioners,

VERSUS

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE PETITIONERS

This is a petition for a writ of certiorari under section 7 of the Act of February 13, 1925, 43 Stat. at L. 940, Fed. Stat. Anno. Supp. 1925, p. 90, which gave jurisdiction to this Honorable Court to examine by certiorari the final judgments and decrees of the Supreme Court of the Philippine Islands in all cases in which the Constitution or any statute, treaty, title, or privilege of the United States was involved, or in causes in which the value in controversy exceeded $25,000.00. By section 8 of the act

application for the writ is required to be made within six months after the entry of the judgment or decree sought to be reviewed. The judgment of the Supreme Court of the Philippine Islands involved in this petition was entered April 11, 1927 (R. 212).

It is urged that a writ of certiorari should issue for the reason that this cause involves a question of the most vital importance arising under a statute of the United States, to wit, the Philippine Autonomy Act, Chap. 416, 39 Stat. at L. 545, Fed. Stat. Anno. Supp. 1918, p. 592; Yu Kong Eng v. Trinidad, 271 U. S. 500, 70 L. ed. 1059; Alejandrino v. Quezon, 271 U. S. 528, 70 L. ed. 1071; Wright v. Ynchausti & Co., 71 (U. S.) L. ed. (Adv. 267); and Posadas v. City of Manila, No. 363, decided May 31, 1927.

OPINION OF THE COURT BELOW

The opinion of Mr. Justice Malcolm of the court below was concurred in by Justices Street, Ostrand, Johns, and Romualdez (R. 69-113). Mr. Justice Johnson filed a separate concurring opinion (R. 114-177), while Chief Justice Avanceña and Justices Villamor and Villa-Real joined in filing a dissenting opinion (R. 178-202).

In reaching the conclusion that section 4 of Act No. 2705, as amended by Act No. 2822, of the Philippine Legislature, was invalid in so far as it pur-

ported to vest the voting power of the stock of the Philippine Government in the National Coal Company in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives, both Mr. Justice Malcolm and Mr. Justice Johnson proceeded on the theory that membership of the committee mentioned was an office within the purview of the Philippine Autonomy Act, and that the power to vote the stock of the Philippine Government in the National Coal Company was an executive function of government vested exclusively in the Governor-General by the Philippine Autonomy Act.

THE QUESTIONS OF LAW

The questions of law presented and the propositions on which the petitioners rely are:

I. Membership of the committee created by section 4 of Act No. 2705 of the Philippine Legislature is not an office within the purview of the Philippine Autonomy Act.

II. The power to vote the stock of the Philippine Government in the National Coal Company is not an executive function of government.

III. The Philippine Legislature had authority to prescribe the method of voting the stock of the Philippine Government in the National Coal Company.

IV. The Philippine Legislature has all general legislative power such as is exercised by States and Territories.

V. The grant of general legislative power to the Philippine Legislature included the authority to create certain offices and to designate the persons to fill such offices.

VI. Act No. 2705 of the Philippine Legislature has received the implied sanction of Congress.

VII. The Governor-General had no authority to exercise solely the voting power of the stock of the Philippine Government in the National Coal Company.

ARGUMENT

I

Membership of the committee created by section 4 of Act No. 2705 of the Philippine Legislature is not an office within the purview of the Philippine Autonomy Act.

In determining what is and what is not an office within the meaning of the Philippine Autonomy Act, there would seem to be no better criterion than the practice of Congress in the premises, for it goes without saying that Congress is the best interpreter of its own enactments. In construing certain provisions of the United States Constitution which are similar to the provisions of the Philippine Autonomy Act governing this branch of the case, Congress had

taken the view that "the regents and directors and consulting trustees to the various public institutions in the District of Columbia and appointed by the Speaker of the House, are not, nor are any of them, officers under the United States within the meaning of the Constitution." One of the public institutions thus mentioned is the Smithsonian Institution, which, because of its important bearing on the instant case, will be presently noticed.

In incorporating the Smithsonian Institution, Congress had provided for its management "by a Board of Regents, named the Regents of the Smithsonian Institution, to be composed of the Vice-President, the Chief Justice of the United States, and three members of the Senate and three members of the House of Representatives; together with six other persons, other than members of Congress, two of whom shall be resident in the city of Washington; and the other four shall be inhabitants of some State, but no two of them of the same State." (9 Fed. Stat. Anno., Sec. 5580.) The act incorporating the Institution also provides that: "The regents to be selected shall be appointed as follows: The members of the Senate by the President thereof; the members of the House by the Speaker thereof; and the six other persons by joint resolution of the Senate and House of Representatives. The members of the House so appointed shall serve for the

term of two years; and on every alternate fourth Wednesday of December a like number shall be appointed in the same manner, to serve until the fourth Wednesday in December, in the second year succeeding their appointment. The Senators so appointed shall serve during the term for which they shall hold, without re-election, their office as Senators. Vacancies occasioned by death, resignation, or otherwise, shall be filled as vacancies in committees are filled. The regular term of service for the other six members shall be six years; and new elections thereof shall be made by joint resolutions of Congress. Vacancies occasioned by death, resignation, or otherwise may be filled in like manner by joint resolution of Congress." (Ibid, Sec. 5581.)

In a carefully prepared report submitted by the Committee on the Judiciary of the House of Representatives, the said committee discussed at length the meaning of the term "public office" and quoted with approval the following authorities:

> "A public office is the right, authority, and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the Government to be exercised by him for the benefit of the public. Mechem's Public Offices and Officers, section 1; Matter of Hathaway, 71 N. Y., 233-243; 3 Greenleaf (Me.), 481; Public Officers,

Throop, sec. 6; Olmstead v. The Mayor, etc., 42 N. Y. Sup Ct., 481.)

"Office involves delegation of sovereign functions. The most important characteristic which distinguishes an office from an employment or contract is that the creation and conferring of an office involves a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public; that some portion of the sovereignty of the country, either legislative, executive, or judicial, attaches for the time being, to be exercised for the public benefit. Unless the powers conferred are of this nature, the individual is not a public officer." (Mechem's Pub. Offices, sec. 4.)

"It (public office) implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office; and the exercise of such power within legal limits constitutes the correct discharge of the duties of such office." (3 Greenleaf (Me.) 481; Mechem's Pub. Offices, etc., sec. 2; Olmstead v. The Mayor, 42 N. Y. Sup. Ct., 481; Public Officers, Throop, sec. 6.)

"The officer is distinguished from the employee," says Judge Cooley, "in the greater importance, dignity, and independence of his position; in being required to take an official oath, and perhaps to give an official bond; in the liability to be called to account as a public offender for misfeasance or nonfeasance in office, and usually, although not necessarily, in the tenure of his position."

The committee also referred to the case of United States v. Germaine, 99 U. S. 508, in which the question of who was or who was not a public officer was discussed, and the court said:

> "If we look to the nature of defendant's employment we think it equally clear that he is not an officer. In that case (referring to United States v. Hartwell) the court said, the term embraces the ideas of tenure, duration, emolument, and duties and that the latter were continuing and permanent, not occasional or temporary. In the case before us, the duties are not continuing and permanent, and they are occasional and intermittent. * * * He is required to keep no place of business for the public use. He gives no bond, and takes no oath, unless by some order of the Commissioner of Pensions of which we are not advised. * * * He is but an agent of the commissioner, appointed by him, and removable by him at his pleasure, to procure information needed to aid in the performance of his own official duties. * * * There is no penalty for his absence from duty or refusal to perform, except his loss of the fee in the given case."

Another case cited by the committee was that of McArthur v. Nelson, 81 Ky. 67, in which the court, being called upon to consider whether certain commissioners were district officers, said:

> "The first section of the act authorizes the judge of the circuit court to appoint three commissioners, residents of the district, who shall hold their office at the will and pleasure of the judge. It is made the duty of the commissioners to have the court-house constructed at a cost not exceeding $50,000, and to enable them to raise this money, they are authorized to issue bonds, with coupons attached, bearing interest at 5 per cent, payable semi-anually; and, to redeem the bonds and pay the interest, they are further empowered to levy an annual tax on the

> real and personal property in the district not exceeding 12 cents on the $100, etc. * * * They are not district officers within the meaning of section 10 of article 6 of the constitution, but are the mere agents for the district, required by the act to discharge certain duties with reference to the building of the courthouse, and when those duties end their employment terminates."

Basing its conclusion on the foregoing authorities, the committee said:

> "In respect to visitors to the Military Academy etc., the committee finds that those members of the House of Representatives appointed and designated as visitors to the Military Academy at West Point, to the Naval Academy at Annapolis, and the regents and directors and consulting trustees to the various public institutions in the District of Columbia and appointed by the Speaker of the House, are not, nor are any of them, officers under the United States within the meaning of the Constitution." (House Report No. 2205, 55th Congress, 3rd Session—House Reports, Vol. 2.)

In United States v. Hatch, 1 Pin. 182 (cited in 45 Am. Dig. Cent. ed. p. 2947), the court held that: "The organic law of the territory of Wisconsin (Act Cong. April 20, 1836), providing for the appointment of all civil officers by the executive, embraces only those officers in whom a portion of the sovereignty is vested, or to whom the enforcement of municipal regulations or the control of the general interests of society is confided, and does not include such officers as canal commissioners."

In Sheboygan v. Parker, 3 Wall. 93, 18 L. ed. 33, an act of the Legislature of Wisconsin authorized the county of Sheboygan to aid in the construction of a certain railroad by becoming a stockholder in the company. The act named certain persons who were to become the agents of the county to subscribe on its behalf for stock and issue its bonds in payment, provided the people of the county should so determine at an election to be held as therein provided. The election was held; a majority of the votes were in favor of issuing the bonds under the act, and the bonds were thereupon issued and delivered by the county to the company, in payment for stock subscribed according to the act. In an action to recover the amount of certain interest coupons attached to the bonds, the county set up in defense, that the act authorizing the county to subscribe for stock and issue its bonds was unconstitutional, because it appointed officers to act for the county while, it was alleged, the constitution required all county officers to be elected by the people or appointed by the board of supervisors. In deciding the case, this Honorable Court said:

> "The defendant below objected that this act was unconstitutional and void, because 'the legislature, in and by said act, assumed to appoint five persons therein named, and to clothe them with the power of county officers, contrary to the Constitution of the state,' which provides that 'all county of-

ficers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties, or appointed by the board of supervisors, as the legislature shall direct.'

"The commissioners or board of supervisors of a county, in the exercise of their general powers as such, have no authority to subscribe stock to railroads, and bind the people of the county to pay bonds issued for that purpose without special authority conferred upon them by the legislature. But when special authority is given to the people of a county to do these acts, and bind themselves by the issue of such bonds, the legislature may properly direct the mode in which it shall be effected. The persons specially appointed to act as agents for the people have a ministerial duty to perform in issuing the bonds, after the people, at an election held for the purpose, have assented that they shall be bound.

"Such persons, in performance of their special duty are in no proper sense 'county officers.' They do not exercise any of the political functions of county officers, such as levying taxes & c. They do not exercise continuously, and as a part of the regular and permanent administration of the government, any important public powers, trusts, or duties.' State v. Kennon, 7 Ohio St. 562."

It will be noticed from a review of the authorities above cited that the most important characteristic of a public office is that "it involves a delegation of a portion of the sovereign functions of government to the person filling the office." The term "public office" also embraces the ideas of tenure, duration, emolument, and duties, and that the latter

are continuing and permanent, not occasional or temporary. Considered in this light, can it be successfully maintained that membership of the committee created by section 4 of Act No. 2705 involves a delegation of a portion of the sovereign functions of government to the person holding such membership? In other words, can it be reasonably contended that the exercise of the right of a stockholder in a private corporation is a portion of the sovereign functions of government? Laying aside the fact that membership of the said committee carries no emolument, can it be said that the duties incident to such membership are continuing and permanent, not occasional or temporary?

That membership of the committee created by section 4 of Act No. 2705 is wholly lacking in the essential elements of a public office, seems too clear to require any further discussion.

II

The power to vote the stock of the Philippine Government in the National Coal Company is not an executive function of government.

The argument advanced against the constitutionality of section 4 of Act No. 2705, is based upon a fundamentally erroneous conception of the nature of the voting power conferred on the committee created thereby. Those who attack the constitutionality of that legal provision proceed on the theory

that the power to vote the stock of the Philippine Government in the National Coal Company is in the nature of an executive function of government vested exclusively in the Governor-General by the Philippine Autonomy Act. Herein lies the fallacy of their argument. Ownership of stock in a corporation is property. In exercising its right of ownership of stock in the National Coal Company, the government acts not in its sovereign, governmental capacity, but in its proprietary, private capacity. Consequently, the principle of the division of governmental powers does not apply. This is the idea underlying the decisions in the best considered cases on the subject.

In the leading case of The Bank of the United States v. The Planters' Bank of Georgia, 9 Wheat. 904, 6 L. ed. 244, 245, this Honorable Court, by Mr. Chief Justice Marshall, said:

> "It is, we think a sound principle, that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted. Thus, many states of this Union who have an interest in banks, are not suable

> even in their own courts; yet they never exempt the corporation from being sued. The state of Georgia, by giving to the bank the capacity to sue and be sued, voluntarily strips itself of its sovereign character, so far as respects the transactions of the bank, and waives all the privileges of that character. As a member of a corporation, a government never exercises its sovereignty. It acts merely as a corporator, and exercises no other power in the management of the affairs of the corporation, than are expressly given by the incorporating act."

In Curran v. The State of Arkansas, 15 How. 304, 14 L. ed. 705, 708, which was a suit against a corporation in which the State was the only stockholder, the court said:

> "And first, as to the character of the parties. By the charter of this Bank, the State of Arkansas became its sole stockholder. But the Bank was a distinct trading corporation, having a complete separate existence, enabled to enter into valid contracts binding itself alone, and having a specific capital stock, provided, and held out to the public as the means to pay its debts. The obligations of its contracts, the funds provided for their performance and the equitable rights of its creditors were in no way affected by the fact that a sovereign state paid in its capital, and consequently became entitled to its profits. When paid in and vested in the corporation, the capital stock became chargeable at once with the trust, and subject to the uses declared and fixed by the charter, to the same extent, and for the same reasons, as it would have been if contributed by private persons.

"That a state, by becoming interested with others in a banking corporation, or by owning all the capital stock, does not impart to that corporation any of its privileges or prerogatives, that it lays down its sovereignty, so far as respects the transactions of the corporation, and exercises no power or privilege in respect to those transactions not derived from the charter, has been repeatedly affirmed by this court in The Bank of the United States v. The Planters' Bank, 9 Wheat. 904; Bank of Kentucky v. Wistar et al, 3 Pet. 431; Briscoe v. The Bank of Kentucky, 11 Id. 324; Darrington et al v. The Bank of Alabama, 13 How. 12. And our opinion is, that the fact that the capital stock of this corporation came from the State which was solely interested in the profits of the business, does not affect the complainant's right, as a creditor, to be paid out of its property, a right which, as we have seen, follows the fund into the hands of every person, save a *bona fide* creditor or purchaser, and which a court of equity is bound to enforce by its decree against any party except such a creditor or purchaser capable by law of being brought within its jurisdiction."

The Supreme Court of North Carolina, in Marshall v. Railroad Co., 92 N. C. 322, declared:

"When the state is a stockholder in a railroad company, it is bound by the provisions of the charter, in the same manner as an individual stockholder. It has no advantage as a stockholder on account of its sovereignty; for by becoming such it lays down

> its character as a sovereign and places itself on a footing of equality with the individual stockholders."

Finally, in National Coal Company v. Collector of Internal Revenue, 46 Philippine 583, the Supreme Court of the Philippine Islands held that the National Coal Company is a private corporation; that the fact that the Government happens to be a stockholder therein does not make it a public corporation; and that as a private corporation it has no greater rights, powers or privileges than any other corporation which might be organized for the same purpose under the Corporation Law. In rendering the opinion of the court, Mr. Justice Johnson said:

> "The plaintiff is a private corporation. The mere fact that the Government happens to be a majority stockholder does not make it a public corporation. Act No. 2705, as amended by Act No. 2822, makes it subject to all of the provisions of the Corporation Law, in so far as they are not inconsistent with said Act (No. 2705). No provisions of Act No. 2705 are found to be inconsistent with the provisions of the Corporation Law. As a private corporation, it has no greater rights, powers or privileges than any other corporation which might be organized for the same purpose under the Corporation Law, and certainly it was not the intention of the Legislature to give it a preference or right or privilege over other legitimate private corporations in the mining of coal."

III

The Philippine Legislature had authority to prescribe the method of voting the stock of the Philippine Government in the National Coal Company.

It may be said that this authority was derived from three sources, namely: (1) the power to create corporations and to provide for their organization and management, (2) the power to appropriate public funds for the purpose of buying stock in the company, and (3) the power to provide for voting by proxy on shares of stock in private corporations.

(1) *The power to create corporations and to provide for their organization and management.* To avoid confusion in the discussion of this point, it is important to bear in mind the nature and scope of Act No. 2705, as amended. This statute is the charter of the National Coal Company. It was enacted by the Philippine Legislature in the exercise of its acknowledged authority to create corporations and to provide for their organization and management. The power to prescribe the method of voting the stock in a corporation is an incident of the power to provide for the organization and management of such corporation. It results, therefore, that it was within the power of the Legislature to provide, under Section 4 of Act No. 2705 that the voting power of the stock of the Philippine Government in the National Coal Company shall be vest-

ed exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

This view of the power of the legislature to provide for the organization and management of corporations or institutions created or established by it finds authoritative confirmation both in (a) federal and (b) local legislation. The following are a few of the instances which may be cited:

A. FEDERAL LEGISLATION

The Smithsonian Institution. The organization and management of this institution has already been noticed in another part of this brief. (See pp. 5-6.)

The National Home for Disabled Volunteer Soldiers. "Very shortly after the close of the Civil War the Congress provided for the incorporation of a perpetual establishment for the care and relief of disabled volunteers of the United States Army, as the National Home for Disabled Volunteer Soldiers. The President, the Secretary of War, the Chief Justice, and such persons as may be associated with them, are constituted as the corporation, to have perpetual succession, and with all corporate powers and responsibilities. The main establishment of the home was located at Dayton, Ohio, and branches have been established at Togus, Maine;

Milwaukee, Wisconsin; Hampden, Virginia; Marion, Indiana; Leavenworth, Kansas; Santa Monica, California; and Danville, Illinois." (Gauss, The American Government, pp. 866-867.)

The National Forest Reservation Commission. In creating the National Forest Reservation Commission, Congress provided as follows: "That a commission, to be known as the National Forest Reservation Commission, consisting of the Secretary of War, the Secretary of the Interior, the Secretary of Agriculture, and two members of the Senate, to be selected by the President of the Senate, and two members of the House of Representatives, to be selected by the Speaker, is hereby created and authorized to consider and pass upon such lands as may be recommended for purchase as provided in section six of this Act, and to fix the price or prices at which such lands may be purchased, and no purchases shall be made of any lands until such lands have been duly approved for purchase by said commission: *Provided*, That the members of the commission herein created shall serve as such only during their incumbency in their respective official positions, and any vacancy on the commission shall be filled in the manner as the original appointment." (36 Stat. at L. 962; 9 Fed. Stat. Anno., p. 598.)

The Public Buildings Commission. The Act of Congress of March 1, 1919, creating a public build-

ings commission provided: "With a view to the control and allotment of space in owned or leased Government buildings in the District of Columbia, a Public Buildings Commission is hereby created to be composed of two Senators to be appointed by the President of the Senate and two members of the House of Representatives to be appointed by the Speaker who shall serve thereon only so long as they are Members of Congress, and the Superintendent of the Capitol Building and Grounds, the officer in charge of public buildings and grounds, and the Supervising Architect or the Acting Supervising Architect of the Treasury during any vacancy in said office. Said commission shall elect one of its members as chairman of the commission and is authorized to employ such expert clerical or other services as it may deem necessary." (Fed. Stat. Anno. Supp. 1919, p. 335.)

B. LOCAL LEGISLATION

The Board of Trustees of the College of San José. Act No. 69 of the Philippine Commission provided for a board of trustees to conduct the College of San José as a school of medicine and pharmacy, as follows: "SECTION 1. T. H. Pardo de Tavera, M. D., Charles R. Greenleaf, M. D., Colonel and Chief Surgeon of the Division of the Philippines in the United States Army, Leon M. Guerrero, Manuel Gomez Martinez, M. D., and Frank S. Bourns, M. D.,

are hereby constituted a board of trustees to take possession of and manage the property and estates of the College of San José, of the City of Manila, to maintain and conduct in the buildings of said college a school of medicine and pharmacy for the benefit of the qualified members of the public of the Philippine Islands, with power to determine the number of professorial chairs to be established, the number of instructors and demonstrators needed, to appoint professors constituting the faculty, to appoint the necessary instructors and demonstrators and other necessary officers and employees, to fix the curriculum, to fix reasonable tuition and other fees to be collected from the students, to determine the period of study necessary for the conferring of the degrees of Doctor of Medicine and Doctor of Pharmacy, and to take any other steps needed in the creation and maintenance of an efficient school of medicine and pharmacy for the Philippine people." Public Laws Enacted by the Philippine Commission, vol. 1, p. 93.

The Board of Control of the Medical School. Act No. 1415 of the Philippine Commission was an act entitled "An Act Establishing a Medical School and Defining the Manner in Which it Shall be Controlled and Conducted", and section 2 thereof provided as follows: "The powers of the corporation until reincorporated as above provided are hereby vested in a body to be known as the 'board of control of the

Philippine Medical School,' which shall consist of the Secretary of Public Instruction, the Secretary of the Interior, one member of the Philippine Commission, and one other member to be designated by the Governor-General. The dean of the faculty of the school, after the establishment of said faculty, also shall be a member of the board of control." Public Laws Enacted by the Philippine Commission, vol. 5, p. 102.

The Capitol Building Committee. Act No. 1841 of the Philippine Legislature provided for the construction of the capitol of the Philippine Islands and created a committee to prepare plans therefor, as follows: "SECTION 2. A committee is hereby created for the purpose of preparing plans for such capitol building or buildings, which committee shall be composed of seven members, three to be appointed by the President of the Commission, three to be appointed by the Speaker of the Assembly, and the seventh to be the Consulting Architect." Public Laws Enacted by the Philippine Legislature, vol. 7, p. 41.

The Philippine Public Library Committee. Act No. 1849 of the Philippine Legislature provided for the establishment of a public library, and section 2 thereof contained the following proviso: "A committee of three, to be known as 'The Philippine Public Library Committee,' shall be appointed by the

Governor-General and the Speaker of the Assembly and shall collect, select for purchase, and purchase, out of the funds appropriated by this Act, such books, papers, documents and periodicals relating to the Philippines and to the history thereof, and such other books, papers, documents, and periodicals, as to said committee may seem proper for the establishment and the uses and purposes of the Philippine Public Library. It shall be the duty of said committee to make a careful investigation of all books, papers, documents, and periodicals now in the hands of the Government relating to the Philippines and to the history thereof, and to make due report of its investigations to the Governor-General, who, upon the recommendations of said committee, may direct the transfer of all said books, papers, documents, and periodicals not required for official purposes to the Philippine Public Library upon the appointment of the librarian provided for by this Act." Public Laws Enacted by the Philippine Legislature, vol. 7, p. 53.

The Board of Regents of the University of the Philippines. Act No. 1870 of the Philippine Legislature provided for the establishment of the University of the Philippines and for its management by a board of regents composed of "the Secretary of Public Instruction, the Director of Education, the chairman of the Committee of Public Instruction of the Philippine Assembly, the president of the

university, and five additional members to be appointed by the Governor-General, by and with the advice and consent of the Philippine Commission. The president of the university shall be selected and his compensation shall be fixed by the Board of Regents, of which board he shall be *ex officio* chairman." Public Laws Enacted by the Philippine Legislature, vol. 7, p. 76.

The Sibul Sanitarium Committee. Act No. 1981 of the Philippine Legislature provided for the establishment of a sanitarium at Sibul, San Miguel de Mayumo, province of Bulacan, and section 4 thereof provided among other things: "A committee is hereby created, to be composed of Donato Teodoro, provincial governor of Bulacan; Hugh Redmond, district engineer; Miguel Siojo, municipal president of San Miguel de Mayumo, Province of Bulacan; and two other members appointed by the Governor-General, to make, subject to the approval of the Governor-General, the aforesaid improvements and such others as they may deem advisable." Public Laws Enacted by the Philippine Legislature, vol. 8, p. 20.

The Philippine Exposition Board. Act No. 2023 of the Philippine Legislature provided for an exposition of Philippine products in the city of Manila, and section 2 thereof provided as follows: "This exposition shall be under the direction and control

of a board of directors, which shall be known as the Philippine Exposition Board and composed of the Secretary of Commerce and Police, who shall be the president thereof; the chairman of the Committee on Industry and Commerce of the Philippine Assembly, who shall be the vice-president; and three members who shall be appointed by the Governor-General. Of the members appointed by the Governor-General, one shall be a member of the Philippine Chamber of Commerce and another a member of the Manila Merchants' Association." Public Laws Enacted by the Philippine Legislature, vol. 8, p. 109.

The Central Sugar Board. Act No. 2479 of the Philippine Legislature created a central sugar board for the purpose of promoting and assisting in the establishment of sugar central in the Philippine Islands, and section 1 of the act provided as follows: "A central sugar board is hereby created, consisting of the Governor-General, the Speaker of the Philippine Assembly, or their authorized representatives, and three members appointed by the Governor- General with the consent of the Philippine Commission." Public Laws Enacted by the Philippine Legislature, vol. 10, p. 232.

The Public Welfare Board. Act No. 2510 of the Philippine Legislature created a public welfare board for the Philippine Islands, and section 3

thereof contained the following proviso: "The Public Welfare Board shall be comprised of the Secretary of Public Instruction who shall be *ex officio* chairman of the Board, the Secretary of the Interior, the Executive Secretary, the Director of Health, the Director of Education, the Director of Prisons, the dean of the College of Medicine and Surgery of the University of the Philippines, the chairman of the Committee of Public Health of the Philippine Assembly, and five additional members to be designated by the Governor-General. The appointive members of the Public Welfare Board shall hold office for a term of two years. In case of a vacancy, such vacancy shall be filled by designation by the Secretary of Public Instruction, and such appointee shall hold office for the unexpired term. All members of the Public Welfare Board shall be citizens of the Philippine Islands or of the United States, and residents of the Philippine Islands, and shall serve without compensation." Public Laws Enacted by the Philippine Legislature, vol. 10, p. 290.

The Coconut Products Board. Act No. 2598 of the Philippine Legislature established a coconut products board to encourage the improvement of coconut products, and provided for its membership as follows: "Section 1. A Coconut Products Board for the improvement of the coconut industry of the

Philippine Islands is hereby established, consisting of the Governor-General, the Speaker of the Philippine Assembly, or their authorized representatives, and one member appointed by the Governor-General, with the advice and consent of the Upper House of the Philippine Legislature." Public Laws Enacted by the Philippine Legislature, vol. 11, p. 220.

The Board on Textbooks. Act No. 2957 of the Philippine Legislature created a board of textbooks to have charge of the selection and approval of the textbooks to be used by the colleges and schools of the Government, and provided for the membership of the board as follows: the chairman of the Committee on Public Instruction of the Senate, the chairman of the Committee on Public Instruction of the House of Representatives, the President of the University of the Philippines, the Director of Education, and a member appointed by the Governor-General. Public Laws Enacted by the Philippine Legislature, vol. 16, p. 202.

The Irrigation Council. Act No. 3208 of the Philippine Legislature created an irrigation council consisting of the Secretary of Commerce and Communications, the Secretary of Agriculture and Natural Resources, the chairman of the Committee on Commerce and Communications of the Senate, the chairman of the Committee on Public Works of the

House of Representatives and one agriculturist appointed by the Governor-General. Public Laws Enacted by the Philippine Legislature, vol. 20, p. 54.

This course of federal and local legislation constitutes a contemporary interpretation of the highest order. It shows clearly what in the contemplation of Congress was within legislative competence, and in deciding what the Philippine Legislature might or might not do, we need not go behind the intention or the will of Congress. For in legislating for the Philippines, Congress is absolute and supreme, and is not subject to the same limitations which apply when it legislates for the United States. In enacting the Philippine Autonomy Act Congress was not bound to follow the principle of the separation of the powers of government. It could grant to the Philippine Legislature such powers as it deemed proper to grant independently of that principle.

(2) *The power to appropriate public funds for the purpose of buying stock in the company.* The stock of the Philippine Government in the National Coal Company was purchased out of public funds appropriated by the Philippine Legislature for that purpose. (Section 6 of Act No. 2705, as amended.) It is well-settled that the control, administration, and disposition of the property and funds of the

state are powers appertaining exclusively to the legislative department of the government. (Black's Constitutional Law, 3rd edition, p. 365.) And the right of the legislature to exercise its control over the administration and disposition of public funds through a committee or body created by it is generally recognized. Thus, in State v. McEwen, 24 Tenn. (5 Hump.) 241, it was held that:

> "The power of the legislature to control the public funds is supreme, and may be exercised by that body, or it may be delegated to a commission; and therefore the resolution adopted by the legislature in January, 1844, appointing commissioners to compromise and settle certain matters in controversy relating to the school fund, were constitutional."

Instances abound where legislatures had created committees or bodies to control the administration and disposition of public funds and property. In the case of the Philippine Legislature, a few of such instances may be found in the following enactments:

Act No. 2028 of the Philippine Legislature appropriated the sum of P2,000.00, and section 2 thereof provided for the administration and disposition of such funds, as follows: "A committee, to be composed of Jaime C. de Veyra, Epifanio de los Santos, Macario Adriatico, Pedro Ramirez, Manuel Artigas, José M. Romero Salas, and Hermenegildo Cruz,

is hereby created to arrange for the expenditure of the funds herein appropriated and to carry out the purposes of this Act." Public Laws Enacted by the Philippine Legislature, vol. 8, p. 114.

Act No. 2133 of the Philippine Legislature appropriated the sum of ₱30,000.00, and section 2 thereof provided for the administration and disposition of such funds, as follows: "The amount appropriated by this Act shall be expended in the discretion of a reception committee, composed of the President and six members of the Philippine Commission, to be appointed by the President of the Commission; the Speaker and six members of the Philippine Assembly, to be appointed by the Speaker of the Assembly; and seven private citizens of the Philippine Islands who shall be appointed by the Governor-General and who shall represent the Municipal Board of the City of Manila, the two Filipino political parties, the merchants and the press, which shall organize and take over its duties, without compensation of any sort for such services, as soon as the visit of such committee of the United States Congress is assured, and shall be authorized to adopt such resolutions as it may deem necessary or advisable for the proper reception and information of said congressional committee." Public Laws Enacted by the Philippine Legislature, vol. 8, p. 266.

Act No. 2795 of the Philippine Legislature appropriated the sum of ₱60,000.00, and section 1 thereof provided for the administration and disposition of such funds, as folows: "There is hereby appropriated, out of any funds in the Insular Treasury not otherwise appropriated, the sum of sixty thousand pesos, or so much thereof as may be necessary, to be expended, under the direction of a committee composed of the Honorable Manuel L. Quezon, President of the Senate and the Honorables Jaime C. de Veyra and Teodoro Yangco, Philippine Resident Commissioners in the United States, for the design, construction, and, in general, all the expenses approved by said committee for the planning and execution at Warsaw, Virginia, of a mausoleum dedicated to the memory of the late William Atkinson Jones, Representative for Virginia." Public Laws Enacted by the Philippine Legislature, vol. 14, p. 169.

(3) *The power to provide for voting by proxy on shares of stock in private corporations.* In voting the stock of the Philippine Government in the National Coal Company, the committee created by section 4 of Act No. 2705 merely acted as a proxy for the Government of the Philippine Islands which was the stockholder. And it is universally conceded that the right to vote by proxy in private corporations

must depend on express authority of statute or by-laws.

> "At common law there is no right to vote by proxy at a corporate election, but every vote must be personally given. To authorize a vote of this character it must be conferred by statute, charter, or by-law." (14 C. J., 907.)

> "The right of voting stock at corporate meetings is an incident of ownership, to be exercised, of course, in the mode and under the restrictions prescribed by the charter and by-laws, but nevertheless, a part of the stockholder's property, inherent in him by virtue of his title." (7 R. C. L., 344.)

In the case at bar, the charter of the National Coal Company expressly provided that the voting power of the stock of the Philippine Government in the said company shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

IV

The Philippine Legislature has all general legislative power such as is exercised by States and Territories.

Section 8 of the Philippine Autonomy Act provides:

> "That general legislative power, except as otherwise herein provided, is hereby granted to the

Philippine legislature, authorized by this act."

The phrase "general legislative power" was inserted in this section on motion of Congressman Towner, formerly Chairman of the Committee on Insular Affairs of the House of Representatives. In explaining his motion, Mr. Towner remarked: "The language which I am asking to have introduced as a substitute is that which is usually given and approved in the formation of constitutions for States and Territories, when they desire to confer legislative power. In other words, it is now well established under American law what general legislative power is, *and this legislature ought to have all general legislative power such as is exercised by States and by Territories.*" (Italics ours.)

In supporting the motion of Mr. Towner, Congressman Mann, the Republican floor leader in the House of Representatives, said: "Mr. Chairman, I am in favor of the amendment offered by the gentleman from Iowa. * * * *I am in favor giving the Philippine Legislature broader power than we would give to a Territory of the United States.* What are we doing today? On one side we are trying to ascertain whether the Philippine people are competent for independence. Never in this world can you ascertain that by treating them like children. The only way that can be ascertained is to put respon-

sibility upon them and see whether they measure up to the responsibility. Now, as far as I am concerned, while I am not in favor of giving the Philippine Islands independence, separating them from the United States, *I am in favor of giving them control over their local affairs—exclusive control.* Of course we could change that law at any time. I am not in favor of letting the Philippine Government enter into foreign relations. I think the United States should stand for them in directing their foreign affairs, but I believe *they ought to have the right to govern themselves locally,* and you can not give them that right by putting a lot of restrictions in and saying they are not competent to do this, we are afraid they will do wrong about that, we will not trust them about some other things. We have got to trust them sooner or later. We have got to turn them loose as an independent people or else we have got to make them friends of ours if they remain under the jurisdiction of the Government of the United States, and the only way you can do so is to treat them like men. (Applause.) We do not own all the wisdom of the world ourselves. We sometimes doubt about our own capacity for self-government. I do not know whether they will have self-government without trials and tribulations, though I do not assume that

they will. We do not. We constantly have trouble amongst ourselves in the best and most enlightened parts of the United States. *Let the Philippine Government take their chance and see whether they can protect themselves in their own government*, and when that is determined it will be time enough for us to determine, first whether they want to be separated from the United States, which I do not think they will then want, and, second whether if they want it the United States feels at liberty to let them go." (Italics ours.)

In the course of his remarks, Mr. Mann was interrupted by Congressman Helm as follows:

> "Mr. HELM. If I understand the gentleman correctly, he wants to give them *the fullest measure of power in the matter of legislation?* (Italics ours.)
>
> "Mr. MANN. I do."

Congressman Miller, speaking also in favor of Mr. Towner's motion, said: "Now, Mr. Chairman, the language of the paragraph as it now stands, to my mind, is clearly improper. Just for a moment see what it does. All legislative powers are granted that heretofore have been granted, to what? To the Philippine Legislature—that is, the assembly—and to the Philippine Commission, and are hereby granted to the Philippine Government. That is,

this paragraph grants to the legislature of the islands which we are now creating only such power as heretofore has been granted to the assembly and to the commission, and that are also herein conferred upon the legislature, which is a complete restriction. As the gentleman from Illinois (Mr. Mann) has here clearly and emphatically stated, if we are to give these people anything like an opportunity to demonstrate their capacity for government, *we certainly must give them free rein, as far as possible, in matters of legislation.*

"Now, if we turn over the page, we find this language in section 12:

> "That all local legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature."

"There is very clearly a conflict between the two. The last does not go even as far as the first. It says 'all local legislative'. I say now, Mr. Chairman, when that paragraph is reached I propose to strike out the word 'local'. *I think the Philippine Legislature should not be tied to Congress constantly by an apron string. I think the people of the islands should have an opportunity to legislate.* Let them draw upon their experience, their knowledge of the affairs of their own people, and act accordingly. *We*

should let them have free and full opportunity to do so. But we have not done so in this paragraph. We have hedged them in, we have curbed them in, we have restricted their legislative activity to within very narrow limits." (Italics ours.)

Resident-Commissioner Quezon, in indorsing Mr. Towner's motion, made the following observations: "Mr. Chairman, I believe that the majority of the Insular Affairs Committee sympathize with the ideas expressed by the gentleman from Iowa (Mr. Towner) and the gentleman from Minnesota (Mr. Miller), although I am not authorized to speak for the majority. Therefore I hope that the amendment will be adopted. The language suggested by the gentleman from Iowa would serve to make it clear *that the purpose of this act is to grant the Philippine Legislature all the powers that usually are possessed by national legislative bodies, except those that are specifically prohibited by other sections of this act and those which affect foreign relations.* The amendment would serve to avoid constitutional questions that may arise if the section is left as it stands, as to whether or not the Philippine Legislature has any right to enact certain legislation." (Italics ours.)

Congressman Towner's motion was approved. (Congressional Record—House, pp. 16233-16235, October 6, 1914.)

We have quoted at length from the record of the Congressional debate on the Jones bill, in order to show beyond cavil the intention and purpose of Congress to grant to the Filipino people, through their legislature, "control over their local affairs—exclusive control" (Mann), "the right to govern themselves locally" (ibid.), "the fullest measure of power in matter of legislation" (Helm), "free rein as far as possible, in matters of legislation" (Miller).

Upon the proposition of giving to the Filipino people "the broadest liberty of self-government"—"the widest liberty of action in all their local affairs"—and of granting to the Philippine Legislature "all of the legitimate power of local self-government and self-taxation," there was a complete agreement—Republicans and Democrats were of the same opinion. This was again manifest from the general remarks made on the bill as a whole.

Congressman Mann said: "If we deal with the Filipino people rightly, they will want to stay here. I have heard debate here about whether the Filipinos are capable of self-government or incapable of self-government. I assume, for the purpose of argument at least that they are capable of self-government. *I am in favor of giving to the Filipino*

people the broadest liberty of self-government, retaining them under the American flag. (Applause on the Republican side.) The objection I have to the pending bill, in part, is that it has too many restrictions in it. If others do not offer amendments to remove those restrictions, I expect to offer a number of amendments to remove the restrictions upon the Philippine Legislature; and for this reason: *If we keep them, we ought to give them the widest liberty of action in all their local affairs.*" (Italics ours.) (Congressional Record—House, p. 16025, October 1, 1914.)

Congressman Jones, the author of the measure, said: "This bill does not express in its terms all that he may have desired and hoped for, but I am in a position to say that he accepts it as a *definite and decided advance in the direction of a more autonomous government* and of proximate and definite independence.

"It gives to his people a legislature of their own choosing in both of its branches; it removes the odious restriction upon the right of suffrage, which denies to the Filipino who can not read and write a foreign language all participation in the civil affairs of his country; *it enables the Filipinos to make their own laws and to raise and to expend the public*

revenues, and it provides for the early and thorough Filipinization of the civil service." (Italics ours.) (Congressional Record—House, p. 16080, October 2, 1914.)

Congressman Towner said: "Gentlemen differ with regard to the matter; each has his individual opinion. But there is this common ground upon which we can stand. *We all agree that we should give them the largest measure of self-government of which they are capable now and at all times.* A larger measure of self-government should be given to them now by this bill than they possessed under the old law." (Italics ours.) (Congressional Record—House, p. 16134, October 3, 1914.)

And, finally, Senator Hitchcock, as Chairman of the Senate Committee on Insular Possessions and Territories, said: "The restrictions upon the legislative powers of the Philippine Legislature in the past have been considerable, because of the fact that the president has the power to appoint the upper house. But under this legislation, upon which the Senate and the House have now practically reached an agreement, both houses will be composed of Filipinos elected by the people. They have power to pass all laws with relation to taxation; they have power to pass all laws with relation to appropriations; they have power to pass all laws concerning

the right of property with a few exceptions, which are ingrafted in the bill, just as Congress and our State legislatures are restrained by certain constitutional limitations.

"But while this act is virtually a constitution for the Philippine Islands and places a legitimate limit upon the power of the legislature, *it leaves to the Philippine Legislature virtually the power of local government.* It gives to the Philippine Senate the power to confirm appointments made by the Governor-General. It gives to the Philippine Legislature the power to say how high taxes shall be. It gives to the Philippine Legislature the power to say for what appropriations shall be. It gives to the Philippine Legislature the control over the municipalities of the Islands, the cities and the towns. It gives to the Philippine Legislature, with the approval of the President, the disposition of the public domain. *It gives to the Philippine Legislature, in short, all of the legitimate power of local self-government and self-taxation,* and it is in my opinion a measure wisely planned and carefully planned to increase beyond the point that has heretofore existed these powers of local self-government." (Italics ours.) (Congressional Record—Senate, Vol. 2, p. 12593, August 15, 1916.)

V

The grant of general legislative power to the Philippine Legislature included the authority to create certain offices and to designate the persons to fill such offices.

Even conceding, for the sake of argument, that membership of the committee created by section 4 of Act No. 2705 is an office within the purview of the Philippine Autonomy Act, it is respectfully submitted that the Philippine Legislature had authority to create such an office and to designate the person to fill it. This authority was included in the general legislative power granted to the Philippine Legislature by section 8 of the Philippine Autonomy Act which provides:

> "That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine legislature, authorized by this act."

Congress was the source of all the powers of the Philippine Government, whether legislative, executive or judicial. In Binns v. United States, 194 U. S. 486, 48 L. ed. 1087, 1089, this Honorable Court said:

> "It must be remembered that Congress, in the government of the territories as well as of the District of Columbia, has plenary power, save as controlled by the provisions of the Constitution; that the form of government it shall establish is not prescribed, and may not necessarily be the same in

all the territories. x x x x It may legislate directly in respect to the local affairs of a territory, or transfer the power of such legislation to a legislature elected by the citizens of the territory."

In United States v. Bull, 15 Philippine 7, 29, the Supreme Court of the Philippine Islands said:

"The legislative power of the Government of the Philippines is granted in general terms subject to specific limitations. The general grant is not alone of power to legislate on certain subjects, but to exercise the legislative power subject to the restrictions stated. It is true that specific authority is conferred upon the Philippine Government relative to certain subjects of legislation, and that Congress has itself legislated upon certain other subjects. These, however, should be viewed simply as enactments on matters wherein Congress was fully informed and ready to act, and not as implying any restriction upon the local legislative authority in other matters."

The power to appoint or to elect all the officers of the Philippine Government resided originally in Congress. Instead of exercising this power directly, Congress had conferred part of it on the President who, under the Philippine Autonomy Act, has the power to appoint certain officers of the Philippine Government. A portion of the same power had also been conferred by Congress on the Governor-Gen-

eral. But the power of appointment so conferred on the Governor-General was limited by section 21 of the Philippine Autonomy Act to (a) such officers as might be appointed by the Governor-General at the time of the enactment of the Philippine Autonomy Act, (b) such officers as he was authorized by the Autonomy Act to appoint, and (c) such officers as he might be authorized by law to appoint. The power of appointment in respect to offices created after the enactment of the Philippine Autonomy Act had been conferred neither on the Governor-General, nor on the other executive officers of the Government, nor on the judicial officers. Appointments to such offices might be made only as authorized by the Philippine Legislature.

There can be no question that in the exercise of its legislative power Congress might pass a law creating a committee such as that created by section 4 of Act No. 2705. However, instead of legislating directly on all matters affecting the Philippines, Congress had seen fit to delegate to the Philippine Legislature its general legislative power in the premises, and by virtue of such delegation the Philippine Legislature might exercise all the legislative power of Congress over the Philippines, subject only to the limitations imposed by Congress itself.

The power of State legislatures to create offices and to appoint or to designate the persons to fill such offices when the appointing power is not exclusively vested by the Constitution in the executive department of the government is generally recognized.

> "In offices which are created by the legislature where the method of appointment is not prescribed by the constitution, the legislature may, according to the majority view, take on itself the responsibility of selecting the persons to be appointed and may name them directly in the statute creating the office, or it may by law create the office and provide that it shall be filled by election or by appointment by the legislature in joint session." 22 R. C. L., p. 426, and cases cited.

In Biggs v. McBride, 17 Or. 640, 5 L. R. A. 115, section 1, article 5, of the Oregon constitution provided: "The chief executive power of the State shall be vested in a governor," etc. It was claimed that this grant of executive power to the governor included the power to appoint the members of the board of railroad commissioners created by an act of the legislative assembly of the State of Oregon. In rejecting this contention, the Supreme Court of Oregon said:

> "It was not claimed at the argument that there is any express provision of the Constitution which

authorized the governor in direct terms to make the appointment in question, but that it is included in the grant contained in Sec. 1, art. 5, of the Constitution. That section declares: 'The chief executive power of the State shall be vested in a governor,' etc.

"Now, if it could be shown that the power to appoint all officers which are not expressly made elective by the people is a part of 'the chief executive power of the State,' the appellant's contention would be sustained; but no authority whatever has been cited to sustain this view, nor is it believed that any exists; on the contrary, the provisions of the fifth article of the Constitution, which relates to the executive department, all seem at variance with this view. The framers of this instrument evidently designed that no prerogative powers should be left lurking in any of its provisions. No doubt they remembered something of the history of the conflicts with prerogative in that country from which we inherited the common law. They therefore defined the powers of the chief executive of the State so clearly and distinctly that there ought to be no controversy concerning the method of filling the same, or, in some cases, of changing the method of filling an existing office."

VI

Act. No. 2705 of the Philippine Legislature has received the implied sanction of Congress.

Act No. 2705 of the Philippine Legislature was approved March 10, 1917. This act was presented to and signed by the Governor-General as prescribed in section 19 of the Philippine Autonomy Act. It had thus been in force for a number of years and acted upon by the executive officers of the Philippine Government, including the present Governor-General. By section 19 of the Philippine Autonomy Act all laws enacted by the Philippine Legislature are to be reported to Congress, which reserves power to annul them. Congress had not seen fit to annul Act No. 2705, notwithstanding that is was reported to it, and that the Wood-Forbes Report recommended "that Congress declare null and void legislation which has been enacted diminishing, limiting, or dividing the authority granted the Governor-General under Act No. 240 of the Sixty-fourth Congress, known as the Jones bill." (See Document No. 325, House of Representatives, Sixty-seventh Congress, Second Session.)

In Clinton v. Englebrocht, 13 Wall. 434, this Honorable Court said:

> "In the first place, we observe that the law has *received the implied sanction of Congress.* It was adopted in 1859. It has been upon the statute book for more than twelve years. It must have been transmitted to Congress soon after it was enacted, for it was the duty of the Secretary of the territory

> to transmit to that body copies of laws on or before the first of the next December in each year. *The implied disapproval by Congress at any time would have annulled it. It is no unreasonable inference, therefore, that it was approved by that body.*" (Italics ours.)

In Ferries v. Vannier, 6 Dak. 186, 42 Pac. 31, the Supreme Court of Dakota said:

> "Congress has before it the laws of each session of our legislature containing those provisions, and the amendments made thereto from time to time, and it has neither disapproved nor modified them. They have, therefore, within the rule laid down by the Supreme Court of the United States, *received the implied sanction of Congress.*" (Italics ours)

In Baca v. Perez, 8 N. M. 187, 42 Pac. 162, the Supreme Court of New Mexico held that the provision that the acts of a territorial legislature be submitted to Congress and that, if disapproved by that body, they shall be of no effect, warranted the inference that when an act had been brought to the attention of Congress, and that body had suffered it to remain without disapproval for a series of years, it approved of the same. In the course of its decision, the court said:

> "It is fundamental that Congress, not rejecting territorial legislation, approves it—the corollary of the statute which requires the submission of the acts

of the legislature to Congress and declares that 'if disapproved they shall be null and of no effect.'

"If wrong, it has been permitted to pass current as law by competent and controlling authority, and must be accepted as *affirmative tantamount to congressional decree. Acquiescence by a party who might have repudiated is ratification.*" (Italics ours.)

In arguing the case for former Governor-General W. Cameron Forbes and his co-defendants, in Tiaco v. Forbes, 228 U. S. 549, 57 L. ed. 960, 963, Mr. Felix Frankfurter, then a law officer in the Bureau of Insular Affairs, and Mr. Justice George A. Malcolm, then an assistant attorney-general of the Philippine Islands, said: "To complement the significance of this reserve power of Congress, it is a sound rule of government that, in the absence of annulment or other action by Congress, an act of the Philippine Legislature, affecting its local affairs, after having been duly brought to congressional attention, will be presumed to have met with the approval of Congress (26 Ops. Atty. Gen. 91, 97, approvingly quoted in Gromer v. Standard Dredging Co., 224 U. S. 362, 371, 56 L. ed. 801, 805, 32 Sup. Ct. Rep. 499; United States v. Bull, 15 Philippine Rep. 31)." And in upholding the validity of the act of the Philippine Legislature involved in that

case, this Honorable Court, by Mr. Justice Holmes, pertinently observed:

> "By Sec. 86 of the act of July 1, 1902, all laws passed by the Philippine Government are to be reported to Congress, which reserves power to annul them. *It is worthy of mention that the law under consideration was reported to Congress and has not been annulled.*" (Italics ours.)

Adverting to the decision just cited, the Supreme Court of the Philippine Islands, in Chanco v. Imperial, 34 Philippine 329, 331, said:

> "The Supreme Court of the United States has held that the Philippine Legislature has the same powers in the Philippine Islands, within the sphere in which it may operate, as Congress itself (Tiaco v. Forbes, 228 U. S., 549); *and it has strongly intimated that when an act of the Philippine Legislature is reported to Congress and has not been annulled by that body it is a lawful and valid act.*" (Italics ours.)

In the recent case of Fajardo Sugar Co. of Porto Rico v. Holcomb, decided by the Circuit Court of Appeals for the First Circuit, November 23, 1926, the court said:

> "If, turning from the sections specifically dealing with the powers of the auditor, we look more broadly at the structure of the government of Porto Rico provided under the Organic Act,—we are driven to the same conclusion. Under that act,

the Governor, Attorney General, commissioner of education and auditor are presidential appointees. The Governor has, in general, the powers of the Governor of one of our states, and besides, he is required annually to make official report of the transactions of the government of Porto Rico to the executive department of the United States, to be designated by the President, and the said annual report shall be transmitted to Congress. Morever, in section 34 (Comp. St. par. 3803n), it is provided that if, after veto of the Governor, the Legislature shall by a two-thirds vote pass an act over the veto, the Governor, if he shall not then approve, shall transmit the proposed act to the President of the United States; that, 'if the President of the United States approve the same he shall sign it and it shall become a law. If he shall not approve same, he shall return it to the Governor so stating, and it shall not become a law.' It follows that no act can become law without the approval of the Porto Rican Governor, a presidential appointee, or of the President of the United States. There is also a provision in section 34 that:

> 'All laws enacted by the legislature of Porto Rico shall be reported to the Congress of the United States x x x x which hereby reserves the power and authority to annul the same.'

If not thus annulled, within reasonable time, there is a presumption that they are approved.

Tiaco v. Forbes, 228 U. S. 549, 558, 33 S. Ct. 585, 57 L. ed. 960; Porto Rico v. American, etc., R. R., 254 F. 369, 165 C. C. A. 589; Camunas v. P. R. Ry. (C. C. A.) 272 F. 924, 931 and cases cited.

The result is that all Porto Rican legislation now on the statute books is—in a very real sense, though indirectly,—the output of our federal government. Under such conditions, the court should not lightly assume that the tax acts of Porto Rico, now contended to be in conflict with section 20 of the Organic Act, are inconsistent and therefore invalid. Doubtless the relation of the Organic Act to the Porto Rican government is, in certain aspects, like the relation of a state Constitution to a state Legislature. Camunas v. P. R. Ry., etc., Co. (C. C. A.) 272 F. 924, 928.

But the analogy is not complete; for, after all, the Organic Act is nothing but federal legislation, and Porto Rican legislation, approved expressly or impliedly by Congress, has exactly the same import.

VII

The Governor-General had no authority to exercise solely the voting power of the stock of the Philippine Government in the National Coal Company.

Even if section 4 of Act No. 2705 were invalid in so far as it purported to vest the voting power of the stock of the Philippine Government in the National Coal Company exclusively in a committee consisting of the Governor-General, the President of the

Senate, and the Speaker of the House of Representatives, it is difficult to conceive how the Governor-General, could be held to possess the power so vested exclusively in the committee. The manifest intention of the Philippine Legislature in creating such committee was to avoid vesting in one man the stock-voting power of the Philippine Government. Upon what principle, therefore, could the Philippine Legislature be presumed to sanction precisely that which it had sought to avoid? It is well settled that where the enforcement of a part of a statute, after the elimination of unconstitutional portions, would produce results not contemplated or desired by the legislature, the entire statute should be held inoperative and void. As stated by Mr. Justice Malcolm in his leading work on "Philippine Constitutional Law," section 23:

> "The courts apply the well-established rule concerning partial invalidity. 'Where part of a statute is void as repugnant to the organic law while another part is valid, the valid portion, if separable from the invalid may stand and be enforced. But in order to do this, the valid portion must be so far independent of the invalid portion that it is fair to presume that the legislature would have enacted it by itself, if they had supposed that they could not constitutionally enact the other. Enough must remain to make a complete, intelligible, and valid statute, *which carries out the legis-*

> *lative intent.* The void provisions must be eliminated without causing results affecting the main purpose of the act, in a manner contrary to the intention of the legislature. The language used in the invalid part of a statute can have no legal force or efficacy for any purpose whatever, *and what remains must express the legislative will, independently of the void part, since the court has no power to legislate.*' " (Italics ours.)

CONCLUSION

Considered in the light of the authorities above set forth, it is respectfully submitted that the conclusion that section 4 of Act 2705, as amended, was invalid as in conflict with the provisions of the Philippine Autonomy Act was strained and far-fetched; and in view of the rule uniformly applied by the courts that an act of a co-ordinate branch of the government with reference to its constitutionality is to receive the benefit of every reasonable doubt, we maintain that such a conclusion should not prevail.

In McGuire v. Chicago, B. & Q. R. Co., 131 Iowa 340, 33 L. R. A. (N. S.) 706, 712, the court said:

> "While it is an imperative duty, from which no court will shrink, to declare void any statute the unconstitutionality of which is made apparent, due regard to the boundary between the legislative and judicial departments of our government requires that this prerogative be exercised with the greatest

> caution, and only after every reasonable presumption has been indulged in favor of the validity of the act. * * *
>
> "So thoroughly are the courts committed to this theory of the law that in Stewart v. Polk County, 30 Iowa, 9, 1 Am. Rep., 238, it is said that a legislative act may be declared unconstitutional only when it violates that instrument clearly, palpably, plainly and in such manner as to leave no reasonable doubt."

In Rubi v. Provincial Board of Mindoro, 39 Philippine 660, 719, the Supreme Court of the Philippine Islands said:

> "Most cautiously should the power of this court to overrule the judgment of the Philippine Legislature, a coordinate branch, be exercised. The whole tendency of the best considered cases is toward non-interference on the part of the courts whenever political ideas are the moving consideration."

If it be argued that our view of the case places great power in the hands of the presiding officers of the two Houses of the Philippine Legislature, the answer would be that the propriety, wisdom and expediency of legislation is exclusively a legislative question, and that the courts will not declare a statute invalid merely because in their judgment it may be unwise or detrimental to the best interests of the state.

On the other hand, if the decision under review were allowed to prevail, the same power would be

placed in the hands of only one man instead of three men, and the placing of immense power in the hands of one man is so contrary to the spirit and genius of American institutions that it could not have been conceived by Congress in the enactment of the Philippine Autonomy Act. "The theory of our governments, state and national, is opposed to the deposit of unlimited power anywhere." (Savings and Loan Assoc. v. Topeka, 20 Wall. 662, 663, 22 L. ed. 461.) As stated by one of the greatest American lawyers and statesmen, Mr. Elihu Root: "If, whatever great officers of state happens to be the most forceful, skillful, and ambitious, is permitted to overrun and absorb to himself the power of all other officers and to control their action, there ensues that concentration of power which destroys the working of free institutions, enables the holder to continue himself in power, and leaves no opportunity to the people for a change except through a revolution. Numerous instances of this process are furnished by the history of some of the Spanish-American republics. It is of little consequence that the officer who usurps the power of others may design only to advance the public interest and to govern well. The system which permits an honest and well-meaning man to do this will afford equal opportunity for selfish ambition to usurp power in its own interest.

Unlimited official power concentrated in one person is despotism, and it is only by carefully observed and jealously maintained limitations upon the power of every public officer that the workings of free institutions can be continued." (E. Root, Addresses on Government and Citizenship, p. 103.)

This case presents another aspect which should not be overlooked. There is no question that the Governor-General could have vetoed Act No. 2705 if he thought that it encroached on his executive powers or functions. Instead of vetoing it, however, he suffered it to become a law by stamping his approval on it. Moreover, he acted upon it for over nine years (Act No. 2705 was approved on March 10, 1917) without questioning its validity. Under these circumstances, it seems but just and proper that he should not now be heard to complain on account of his failure to exercise his power to veto the act in question at the proper time.

But it may be objected that the incumbent of the office of Governor-General who challenged the validity of the act was not the same person who approved it. This is quite true, but the answer is simple. The whole theory of our system of government is that it is a government of laws and not of men. Accordingly, men may change, but our system of government does not change with them. The incumbents of an office may change but in le-

gal contemplation, the powers and duties of the office continue the same until changed by competent legislation.

No more edifying example can be cited than that shown by Chief Justice Marshall and his eminent associates in this Court when they were called upon to pass on the constitutionality of the circuit court act of 1802, which the great Chief Justice and some of his associates believed to be unconstitutional in so far as it required the performance of circuit court duty by supreme court judges. Absolutely laying aside personal and political considerations, they upheld the validity of the circuit court act, on the ground that as the original judiciary act of 1789 contained provision for circuit court duty, and as the supreme court judges (their predecessors in office) had performed such duty for a period of several years, such practice and acquiescence "affords an irresistible answer, and has fixed the construction. It is a contemporary interpretation of the most forcible nature. This practical exposition is too strong and obstinate to be shaken and controlled. Of course, the question is at rest and ought not to be disturbed." (Stuart v. Baird, 1 Cranch, 299.)

Writing to Judge Paterson before the decision in the above-mentioned case was rendered, the great

Chief Justice said: "This is a subject not to be lightly resolved on. The consequences of refusing to carry the law into effect may be very serious. For myself, personally, I disregard them; and so, I am persuaded, does every other gentleman on the Bench when put in competition with what he thinks his duty, but the conviction of duty ought to be very strong before the measure is resolved on. The law having been once executed will detract very much, in the public estimation from the merit or opinion of the sincerity of a determination not now to act under it."

Commenting on this brilliant episode, Charles Warren, in his celebrated work on the Supreme Court in United States History, says: "No more striking example of the non-partisanship of the American Judiciary can be found than this decision by a Court composed wholly of Federalists, upholding, contrary to its personal and political views, a detested Republican measure; and the case well justified the comment made by William Rawle in his *View of the Constitution* in 1825, that it illustrated the fortunate truth that in this Republic 'party taint seldom contaminates judicial functions.' It is interesting to note that the decision evoked from the most politically hostile papers of the day warm commendation of Marshall for 'this one

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IN THE

Supreme Court of the United States

No. 573

OCTOBER TERM, 1927.

GREGORIO AGONCILLO, BALDOMERO ROXAS AND CATALINO LAVADIA,

Petitioners,

versus

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS AND BRIEF IN SUPPORT THEREOF.

JOSE ABAD SANTOS,
JAMES ROSS,
QUINTIN PAREDES,
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MANILA, I. F.—1927

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GREGORIO AGONCILLO, BALDOMERO ROXAS and CATALINO LAVADIA,

Petitioners,

VERSUS

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

Respondent.

To the Honorable, the Supreme Court of the United States:

Your petitioners, Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, respectfully pray that a writ of certiorari may issue to review the judgment of the Supreme Court of the Philippine Islands rendered April 11, 1927, in the case therein entitled "The Government of the Philippine Islands, plaintiff, versus Gregorio Agoncillo, Baldomero

Roxas and Catalino Lavadia, defendants," being No. 27225 in said Court.

NATURE OF THE CASE

This action was originally brought in the Supreme Court of the Philippine Islands under section 2952 of the Compiled Acts of the Philippine Commission, for the purpose of ousting the defendants, the petitioners here, from the offices of directors of the Philippine National Bank. The gravamen of the complaint filed in this case was the alleged invalidity of the amendments to section 4 of Act No. 2612 of the Philippine Legislature made by section 1 of Act No. 2747 and by section 1 of Act No. 2938, under and by virtue of which the defendants were elected directors of the Philippine National Bank.

Act No. 2612, entitled "An Act Creating the Philippine National Bank," was passed by the Philippine Legislature, and approved February 4, 1916. The relevant parts of the act read as follows:

> "Section 1. There is hereby created a bank to be known as the Philippine National Bank, the short title of which shall be the National Bank. Its principal domicile and place of business shall be in the city of Manila.

"Sec. 2. The said National Bank, upon its organization, shall be a body corporate and shall have power:

(a) To prescribe its by-laws;

(b) To adopt and use a seal;

(c) To make contracts;

(d) To sue and be sued;

(e) To exercise the powers granted in this act and such incidental powers as may be necessary to carry out the business of banking within the limitations prescribed by this act; and

(f) To exercise, further, the general powers mentioned in the Corporation Law in so far as they are not inconsistent or incompatible with the provisions of this act.

"Sec. 3. The capital of the National Bank shall be twenty million pesos, Philippine currency, divided into two hundred thousand shares of the value at par, of one hundred pesos, Philippine currency, each.

* * * * * * *

"Sec. 4. The Government of the Philippine Islands not later than January thirty-first, nineteen hundred and seventeen, shall

purchase one hundred and one thousand shares, at par, of the said National Bank, the payment for said shares of the government to be made as hereinafter provided. Ninety-nine thousand shares of said capital stock shall be offered to the public at par, as hereinafter provided."

Section 5 of the act appropriated the amount necessary to pay for the shares to be purchased by the Government of the Philippine Islands, and prescribed the method of voting the shares of stock so purchased by the government, as follows:

> "That the voting power of all stock purchased directly by the Philippine Government as an investment from the general funds of the government, and the voting power of all stock purchased for the benefit of the Insurance Fund, of the Public Works Bonds Sinking Fund, and of the Friar Lands Bonds Sinking Fund, shall be vested exclusively in the Governor-General."

Section 20 thereof in part provided:

> "The affairs and business of the National Bank shall be managed by a Board of

> Directors consisting of the President of the bank, who shall be Chief Executive thereof and chairman of the board at the same time, one Vice-President, who shall assist the President and act in his stead in case of absence or incapacity, and five members elected as hereinafter provided."

And section 21 of the same act contained the following provision:

> "The President and Vice-President shall be appointed by the Governor-General, by and with the consent of the Upper House of the Philippine Legislature, and may be removed for cause by said Governor-General by and with the consent of said House. The five remaining members shall be elected and may be removed in accordance with the provisions of Act Numbered Fourteen Hundred and Fifty-nine, the Corporation Law."

Act No. 2747, entitled "An Act to Amend in Certain Particulars Act Numbered Twenty-six Hundred and Twelve, Entitled 'An Act Creating the Philippine National Bank'," was passed by the Philippine Legislature, and approved February 20, 1918. Section 1 of this act, by amending section 4

memorable act in supporting the Government on the question of the repeal of Judiciary Law (which) stands a living reproach to such as can believe . . . that you would surrender the chastity of the Court to the lust of envy . . . . The weight of your authority then calmed the tumult of faction, and you stood, as you must continue to stand, a star of the first magnitude.' " (Warren, The Supreme Court in United States History, Vol. 1, pp. 269-273.)

WHEREFORE, it is respectfully prayed that the petition for a writ of certiorari be granted.

Respectfully submitted,

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of Act No. 2612 above mentioned, prescribed a new method of voting the stock of the Philippine Government in the National Bank, as follows:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

Act No. 2938, entitled "An Act to Amend Act Numbered Twenty-six Hundred and Twelve, Entitled 'An Act Creating the Philippine National Bank,' as Amended by Act Numbered Twenty-seven Hundred and Forty-seven," was passed by the Philippine Legislature, and approved January 30, 1921. By this act the bank was authorized to increase its capital stock from P20,000,000.00 to P50,000,000.00, and the Philippine Government was authorized to purchase, at par, shares of the stock of the bank to the aggregate number of not less than 153,000. The provision of Act No. 2612, as amended by Act No. 2747, relating to the method of voting the stock

of the Philippine Government in the bank, was further amended to read as follows:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

Sections 16, 17 and 18 of Act No. 2612, as amended by Act No. 2747, were also further amended to read as follows:

> "Sec. 16. The affairs and business of the National Bank shall be directed and its property managed and preserved, unless otherwise provided in this act, by a board of directors consisting of nine members duly elected as hereinafter provided, who shall be paid a per diem of thirty pesos for each session of the board of directors attended by them.
>
> "Sec. 17. Within the first twenty days after the approval of this act, and annually on the first Tuesday after the first Monday

in March, beginning with the year nineteen hundred and twenty-two, the stockholders shall meet to elect the members of the board of directors for the current year, each stockholder or proxy to be entittled to as many votes as he may have shares of stock, registered in his name on the thirty-first of January last preceding and held by him at the time of the election. Immediately after the election, the directors elected shall organize as such and elect from amongst themselves a president and a vice-president, which latter shall assist the president and act in his stead in case of absence or incapacity: *Provided*, That no director or employee of any other bank shall be eligible as member of the board of directors of the National Bank.

"Sec. 18. The orders and resolutions of the board of directors shall be carried out by a general manager who shall be chief executive of the bank and shall be paid an annual salary to be fixed by the board of directors with the approval of the Board of Control, and an assistant general manager, who shall assist the general manager and act in his stead in case of absence or incapacity, and

> shall be paid a salary to be fixed by the board of directors, with the approval of the Board of Control. The general manager shall be appointed by the board of directors, with the advice and consent of the Board of Control, and may be removed in a like manner."

In accordance with the provisions of Act No. 2938, section 47 of the by-laws of the Philippine National Bank provided:

> "The voting power of all stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the 'Board of Control' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representitives" (R. 66).

These by-laws were adopted February 18, 1921, and approved by the board of control composed of Charles E. Yeater, as Acting Governor-General of the Philippine Islands, Manuel L. Quezon, as President of the Philippine Senate, and Sergio Osmeña, as Speaker of the Philippine House of Representatives (R. 28-84).

Both Act No. 2747 and Act No. 2938 had been in force for a number of years and acted upon by

the executive officers of the Philippine Government, including the present Governor-General. By section 19 of the Philippine Autonomy Act all laws enacted by the Philippine Legislature are to be reported to Congress, which reserves power to annul them. The acts under consideration were reported to Congress, and have not been annulled.

The Supreme Court of the Philippine Islands (Chief Justice Avanceña and Justices Villamor and Villa-Real, dissenting) held that section 4 of Act No. 2612, as amended by section 1 of Act No. 2747 and by section 1 of Act No. 2938, was invalid in so far as it purported to vest the voting power of the stock of the Philippine Government in the National Bank exclusively in a committee consisting, or in a board of control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

MAIN POINT INVOLVED IN THE CASE

The main point in the case is whether that part of section 4 of Act No. 2612, as amended by section 1 of Act No. 2747 and by section 1 of Act No. 2938, which purported to vest the voting power of the stock of the Philippine Government in the National Bank exclusively in a committee consisting, or in a board

of control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives, is invalid as in conflict with the provisions of the Philippine Autonomy Act (Act of Congress of August 29, 1916), commonly known as the Jones Law.

REASONS FOR THE ALLOWANCE OF THE WRIT

It is urged that a writ of certiorari should issue for the following reasons:

1. A statute of the United States, to wit, the Philippine Autonomy Act, is involved.

2. This cause involves a question of the most vital importance arising under the Philippine Autonomy Act—a question more far reaching in its effect than the ones decided by this Honorable Court in Yu Kong Eng v. Trinidad, 271 U. S. 500, 70 L. ed. 1059; Alejandrino v. Quezon, 271 U. S. 528, 70 L. ed. 1071; Wright v. Ynchausti & Co., 71 (U. S.) L. ed. (Adv. 267); Ingenohl v. Olsen & Co., 71 (U. S.) L. ed. (Adv. 517); and Posadas v. City of Manila, No. 363, decided May 31, 1927.

3. The Supreme Court of the Philippine Islands failed to follow or give force or effect to the

rulings and decisions of this Honorable Court on the legal propositions involved.

4. The question herein decided below adversely to your petitioners by a divided court, which involves the legal and just construction and effect of important provisions of the Philippine Autonomy Act, should be authoritatively and finally adjudged by this Honorable Court upon and after a full presentation to the Court of the merits of the said question.

5. A full consideration of the case by this Honorable Court will tend to prevent costly and undesirable litigation, and promote justice to all concerned.

WHEREFORE, it is respectfully prayed that this petition for a writ of certiorari be granted.

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CHAS. E. TENNEY,
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. .....

GREGORIO AGONCILLO, BALDOMERO ROXAS and CATALINO LAVADIA,

Petitioners,

VERSUS

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

BRIEF FOR THE PETITIONERS

This is a petition for a writ of certiorari under section 7 of the Act of February 13, 1925, 43 Stat. at L. 940, Fed. Stat. Anno. Supp. 1925, p. 90, which gave jurisdiction to this Honorable Court to exa-

mine by certiorari the final judgments and decrees of the Supreme Court of the Philippine Islands in all cases in which the Constitution or any statute, treaty, title, or privilege of the United States was involved, or in causes in which the value in controversy exceeded $25,000.00. By section 8 of the act application for the writ is required to be made within six months after the entry of the judgment or decree sought to be reviewed. The judgment of the Supreme Court of the Philippine Islands involved in this petition was entered April 11, 1927 (R. 270).

It is urged that a writ of certiorari should issue for the reason that this cause involves a question of the most vital importance arising under a statute of the United States, to wit, the Philippine Autonomy Act, chap. 416, 39 Stat. at L. 545, Fed. Stat. Anno. Supp. 1918, p. 592. Yu Kong Eng v. Trinidad, 271 U. S. 500, 70 L. ed. 1059; Alejandrino v. Quezon, 271 U. S. 528, 70 L. ed. 1071; Wright v. Ynchausti & Co., 71 (U. S.) L. ed. (Adv. 267); and Posadas v. City of Manila, No. 363, decided May 31, 1927.

OPINION OF THE COURT BELOW

The opinion of Mr. Justice Malcolm of the court below was concurred in by Justices Street, Ostrand, Johns, and Romualdez (R. 217-226). Mr. Justice Johnson filed a separate concurring opinion (R. 228-261), while Chief Justice Avanceña and Justices Villamor and Villa-Real joined in filing a dissenting opinion (R. 261-262).

In reaching the conclusion that section 4 of Act No. 2612, as amended by section 1 of Act No. 2747 and by section 1 of Act No. 2938 of the Philippine Legislature, was invalid in so far as it purported to vest the voting power of the stock of the Philippine Government in the Philippine National Bank in a committee consisting, or in a board of control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives, both Mr. Justice Malcolm and Mr. Justice Johnson proceeded on the theory that membership of the committee or of the board of control mentioned was an office within the purview of the Philippine Autonomy Act, and that the power to vote the stock of the Philippine Government in the Philippine National Bank was an executive function of government vested exclusively in the Governor-General by the Philippine Autonomy Act.

THE QUESTIONS OF LAW

The questions of law presented and the propositions on which the petitioners rely are:

I. Membership of the committee or of the board of control created by section 4 of Act No. 2612, as amended by section 1 of Act No. 2747 and by section 1 of Act No. 2938 of the Philippine Legislature, is not an office within the purview of the Philippine Autonomy Act.

II. The power to vote the stock of the Philippine Government in the Philippine National Bank is not an executive function of government.

III. The Philippine Legislature had authority to prescribe the method of voting the stock of the Philippine Government in the Philippine National Bank.

IV. The Philippine Legislature has all general legislative power such as is exercised by States and Territories.

V. The grant of general legislative power to the Philippine Legislature included the authority to create certain offices and to designate the persons to fill such offices.

VI. Act No. 2747 and Act No. 2938 of the Philippine Legislature have received the implied sanction of Congress.

ARGUMENT

In rendering the opinion of the Supreme Court of the Philippine Islands in the case below, Mr. Justice Malcolm observed:

"The main issue has been sufficiently discussed in the previous case of the Government of the Philippine Islands v. Milton E. Springer, et al., No. 26979. What was said in that decision may be taken as incorporated herein. What differences there are between the two cases on the principal question incline to strengthen rather than weaken the instant case" (R. 223).

In conclusion he said:

"Being guided by the decision in the companion case of the Government of the Philippine Islands v. Milton E. Springer, et al, it results that the defendants shall be ousted and altogether excluded from the offices of directors of the Philippine National Bank which they are unlawfully holding, and that the three directors selected by the Governor-General shall be placed in possession of those offices" (R. 226).

The related suit of the Government of the Philippine Islands v. Milton E. Springer, Dalmacio Costas, and Anselmo Hilario is now pending in this Court on petition for a writ of certiorari to the

Supreme Court of the Philippine Islands; and in order to avoid repetition, it is respectfully prayed that this Honorable Court consider as reproduced here, *mutatis mutandis*, the argument contained in the brief filed in support of the petition for a writ of certiorari in that case.

Respectfully submitted,

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Office Supreme Court, U. S.
FILED
APR 4 1928
CHARLES ELMORE CROPLEY
Clerk

Supreme Court of the United States

OCTOBER TERM, 1927.

No. 564.

MILTON E. SPRINGER, DALMACIO COSTAS and ANSELMO HILARIO,

Petitioners,

v.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE PETITIONERS.

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Supreme Court of the United States

October Term, 1927.

MILTON E. SPRINGER, DALMACIO COSTAS, and ANSELMO HILARIO, Petitioners, v. THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Respondent.	No. 564.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE PETITIONERS.

Previous Opinion in the Present Case.

The opinions in the Supreme Court of the Philippine Islands appear at pages 69-202 of the Record.

Jurisdiction.

The judgment of the Supreme Court of the Philippine Islands to be reviewed was entered on the 11th day of April, 1927 (R., 212). Petition for writ of certiorari was filed, and the writ granted, pursuant to section 7 of the Act of February 13, 1925 (43 Stat. 936, 940).

Statement of the Case.

The judgment here under review was entered by the Supreme Court of the Philippine Islands in an original proceeding in *quo warranto* brought in the name of the Insular Government against the three petitioners, to oust them as directors of the National Coal Company of the Philippine Islands. The judgment overruled a demurrer that had been entered by the petitioners and finally ousted them from their positions as directors.

The National Coal Company is a corporation, organized and existing under and by virtue of Act No. 2705, as amended by Act No. 2822, of the Philippine Legislature, and, also, under and by virtue of the Corporation Law of the Philippine Islands.

Section 4 of Act No. 2705 provides:

> "The Governor General on behalf of the Government of the Philippine Islands shall subscribe for fifty-one per centum of said capital stock and the remainder shall be offered to the public * * *. The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor General, the President of the Senate, and the Speaker of the House of Representatives."

The last sentence in the quoted excerpt is the part of the act herein important. It appears in identical form in the amendatory act referred to above. It is contended by the respondent that this provision is in conflict with the Philippine Autonomy Act in that it constitutes, in the respects hereinafter more fully set forth, an invasion of the executive power of the Governor-General.

Act No. 2705 was passed by the Insular Legislature March 10, 1917. It was presented to, and signed by, the then Governor-General as prescribed by section 19 of the Philippine Autonomy Act. Section 19 of the Autonomy Act also re-

quires all laws enacted by the Philippine Legislature to be reported to Congress, which has reserved to itself the power, if it sees fit, to annul them. Act 2705 was so reported, but it has never been annulled by Congress. The foregoing facts are, also, true of Act No. 2822, which was passed by the Philippine Legislature March 5th, 1919.

The foregoing legislation was again brought specifically to the attention of Congress in the Wood-Forbes Report on Conditions in the Philippine Islands (at p. 42 thereof), in which the recommendation was made (p. 46) "that Congress declare null and void legislation which has been enacted diminishing, limiting or dividing the authority granted the Governor-General under Act No. 240 of the 64th Congress, known as the Jones Bill [that is, the Autonomy Act]." (Document No. 325, H. R., 67th Cong. 2d Sess.)

After the enactment and approval of Act No. 2705 in 1917, the National Coal Company was organized, and thereafter, until the inception of the present dispute in December, 1926, the Governor-General, the President of the Senate and the Speaker of the House of Representatives jointly voted the government stock in the Coal Company as Act 2705 provided. At that time, Congress having failed to annul the legislation as had been recommended, the then Governor-General, one of the authors of the recommendation, launched the present attack on the stock-voting provision of the statute. The occasion was a special meeting of the stockholders of the Coal Company, called for three o'clock on December 6, 1926, for the purpose of electing directors and of transacting such other business as might properly come before the meeting.

On November 29, 1926, the President of the Senate and the Speaker of the House of Representatives as members of the statutory committee had formally requested the Governor-General to call a meeting of the committee on or before December 6th, 1926, at 2:30 o'clock in the afternoon, for the purpose of determining how the Government's stock in the National Coal Company should be voted at the special meeting of stockholders, already mentioned as called for three

o'clock of that day. This formal request had been made as a result of the prior issuance on November 9, 1926, of Executive Order No. 37, wherein the Governor-General had announced his intention thenceforth to exercise alone the duties and powers by the statute confided to the committee.

In their request to the Governor-General, the President of the Senate and the Speaker of the House of Representatives, therefore, informed the Governor-General that, should he fail or refuse to call a meeting of the committee, they, as members thereof, would hold such a meeting at 2:30 o'clock in the afternoon of December 6, 1926, for the purpose mentioned in the said request.

The Governor-General failing to call the meeting, the President of the Senate and the Speaker of the House of Representatives met at the time and place specified in their request to the Governor-General, and held a meeting of the committee created by section 4 of Act No. 2705 as quoted above. The Governor-General was not present at this meeting. According to paragraph 12 of the complaint in the present action, his omission and refusal to participate therein, were for the reasons stated in Executive Order No. 37 already referred to.

At the meeting of the committee, it was unanimously resolved that the votes represented by the government-owned stock should be cast in favor of the following persons, as directors of the National Coal Company: Alberto Barretto, Frank B. Ingersoll, and the three petitioners, Milton E. Springer, Dalmacio Costas, and Anselmo Hilario.

Thereafter the special meeting of the stockholders of the National Coal Company was held at the time and place mentioned in the call. The Governor-General, through his proxy, the Hon. F. C. Fisher, attended the meeting and claimed sole representation of the stock held by the Government of the Philippine Islands. The President of the Senate and the Speaker of the House of Representatives also attended the meeting and immediately filed with the secretary of the company, a certified copy of the minutes of the meeting of the

statutory committee, already referred to, wherein it appeared that the committee had resolved that they, the President of the Senate and the Speaker of the House of Representatives should attend the stockholders' meeting for the purpose of representing the stock held by the Government of the Philippine Islands, and of voting that stock in accordance with the resolutions of the committee already referred to.

The Governor-General, through his proxy, thereupon objected to the claim of the President of the Senate and the Speaker of the House of Representatives to represent the government-owned stock and they, likewise, objected to his claim to represent it—all as appears at pages 6-8 of the minutes of this meeting as reproduced in Exhibit C of the record herein.

The chair recognized the President of the Senate and the Speaker of the House of Representatives, in their capacity as members of the committee and in accordance with the resolution approved by that committee, as the persons lawfully entitled to represent and vote all of the stock held by the Government of the Philippine Islands. To this ruling the Governor-General, through his proxy, protested.

Thereafter, at the election of the directors, the President of the Senate and the Speaker of the House of Representatives cast a ballot on behalf of the statutory committee in accordance with the resolutions of that committee, already referred to. The Governor-General, through his proxy, purporting to represent the government-owned stock, also cast a ballot for the election of the directors; but in accordance with the previous ruling of the chair, this ballot was disregarded and those persons voted for by the President of the Senate and the Speaker of the House of Representatives as representing the committee, including the three petitioners herein, were declared elected as directors of the company. As the proxy of the Governor-General, also, voted for two of the five persons voted for by the President of the Senate and the Speaker of the House of Representatives, the rights

of the three petitioners only, out of the five persons voted for by the President of the Senate and the Speaker of the House of Representatives, are now being contested by the respondent.

The present proceedings in *quo warranto* were shortly thereafter instituted in the name of the Government of the Philippine Islands with the object, as stated, of ousting the petitioners from their positions as directors of the Coal Company. The Supreme Court of the Philippine Islands (Chief Justice Avancena and Justices Villamor and Villa-Real dissenting) held that section 4 of Act No. 2705, as amended by Act No. 2822, was invalid insofar as it purported to vest in either the President of the Senate or the Speaker of the House of Representatives, as members of the committee therein provided for, any share in the voting power of the government-owned stock in the National Coal Company; but that insofar as it gave such power to the Governor-General it was valid and a sufficient warrant for his sole exercise of the power and that, even in the absence of statutory provision for his exercise of the stock-voting power, that power would be his by reason of its inherently executive character. The court, therefore, gave judgment ousting the three petitioners as directors of the National Coal Company.

The question herein presented for review is, then, whether that portion of the acts of the Philippine Legislature, already alluded to, is really invalid as in conflict with provisions of the Autonomy Act of 1916, commonly known as the Jones Law.

SUMMARY OF ARGUMENT.

The voting power of the government-owned stock of the National Coal Company is not an office and all respondents contentions as to an alleged invasion of the Governor-General's powers of appointing persons to public office is for that reason quite beside the question which the present case presents. The duty of voting government-owned stock involves no delegation to the members of the stock-voting committee of any sovereign, or governmental, power. It is, therefore, under the decisions of this court not a public office within the rules as to the executive power of appointment. But regardless of the character of the duties of the members of the committee no new offices were, under Act 2705, created since the members of the committee have no tenure of the voting power apart from their tenure of the offices of Governor-General, President of the Senate and Speaker of the House of Representatives—in other words Act 2705 merely increases the duties of the offices just named. Under the decisions of this court such an increase of the duties attaching to offices already in existence is no invasion of the executive power of appointing persons to public office. The only question which the case presents is whether the duties so attached to the legislative offices of President of the Senate and Speaker of the House of Representatives are so essentially executive in character as to be insusceptible of attachment to legislative offices.

The Philippine Legislature has all general legislative powers such as legislatures of states and territories ordinarily enjoy. This is clear both from the language of the Autonomy Act and from the debates in Congress at the time of this adoption.

It is not disputed that the objects for the attainment of which the Coal Company was created were within the power of the Philippine Legislature. The voting of the government-owned stock in the National Coal Company

is merely a part of the machinery for the management of that corporation and, under the Legislature's power to create corporations for the attainment of objects otherwise within its power and to provide for the organization of such corporations and for their management, the legislature may confer the voting power of the corporate stock as it sees fit. In the case of private corporations, adopted by a legislature as instrumentalities for the accomplishment of those objects otherwise within its powers, corporate control has ordinarily been vested in persons entirely outside the government concerned. The National Coal Company is a private corporation. The decisions of this court uniformly hold that government ownership of part, or even all, of the stock of such a corporation does not change its private character. Even in the case of public corporations there are many instances of the vesting of control in legislative and judicial officers. The principle of the tripartite division of governmental power has no application to provisions for the management of corporations either public or private.

Even if the corporate entity of the National Coal Company were disregarded and even if the power of voting the government stock were regarded as a duty of caring for government property, still the stock-voting power, as such a duty, could be confided to legislative officers; for the duty of caring for government property is exclusively legislative. This is a characteristic feature of the American theory of government. This power was unquestionably within the general grant of legislative power to the Philippine Legislature.

The law is settled that the officers of such a corporation as the National Coal Company are not officers of the Philippine Government and the fact that the voting power of the government-owned stock in the National Coal Company is to be exercised for the purpose, *inter alia*, of selecting such officers does not make that voting power a part of the Governor-General's asserted power of appointing persons to public office. The decisions of this court cited by the respondents as

supporting a contrary proposition are entirely irrelevant. A recent decision of this court is conclusive of the proposition asserted by petitioners.

The provisions of the statute under attack would, however, be unobjectionable even if the company's directors, officers and employees were considered to be public officers and even if the stock-voting power in the National Coal Company were also conceded to be a public office. Section 18 of the Philippine Autonomy Act disqualifies legislators from appointment only to certain classes of public offices and even as to those offices to which it applies the disqualification is not perpetual. Under the proper construction of that section, the President of the Senate and the Speaker of the House of Representatives, who acted on the committee that elected the petitioners, were qualified to discharge that function even if that function be deemed, as stated, a public office. The Governor-General of the Philippine Islands is not vested with general executive power. His power is supreme but not general. He has only those powers to him specifically given by the Autonomy Act. He has certain specified powers of appointing persons to public office but those powers would not extend to the appointment of the persons holding the voting power in the National Coal Company or to the appointment of its directors, officers and employees even if all these persons were conceded to be public officers. The Governor-General is charged with no duty of faithful execution of the law that touches the management of the National Coal Company and no inference of power based on such a responsibility can, therefore, be made.

The act of the Philippine Legislature here in question was reported to Congress at the time of its adoption and during the eleven years that have since elapsed Congress, though entitled to do so, if it sees fit, has taken no steps to annul that act although such annulment was the subject of specific recommendation to it. Under these circumstances the decisions of this court establish that Congressional approval is to be

inferred. Congressional approval would give to Act 2705 a status equivalent to that of an act of Congress and as such the act should not be disturbed even though the foregoing contentions of the petitioners be deemed unfounded.

THE ARGUMENT.

POINT I.

The voting power of the government-owned stock in the National Coal Company is not an office and all respondent's contentions as to an alleged invasion of the Governor-General's asserted general power of appointing persons to public office is, for that reason, quite beside the point.

The Philippine Supreme Court in its opinion in the present case held that the power and duty of voting the government-owned stock held in the National Coal Company constituted a public office and that in conferring a share in this voting power upon the President of the Senate and the Speaker of the House of Representatives, the Philippine Legislature had infringed upon the executive power of appointment to public office which, the court said, was under the Autonomy Act, conferred exclusively upon the Governor-General.

Mechem at page 1 of his work on Public Offices and Public Officers defines an office as follows:

> "A public office is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer."

And at page 5 of the same work it is further stated:

> "The most important characteristic which distinguishes an office from an employment or contract is that the creation and conferring of an office involves a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public;—that some portion of the sovereignty of the country, either legislative, executive or judicial, attaches, for the time being, to be exercised for the public benefit. Unless the powers conferred are of this nature, the individual is not a public officer."

The criteria of public office summarized by Mechem are in accord with those to be gathered from the various decisions of this court.

Sheboygan County v. *Parker*, 3 Wallace 93, is a case in point. In that case the legislature of the state of Wisconsin had authorized the county of Sheboygan to subscribe to the capital stock of a certain projected railroad, and in the act so authorizing such subscription had appointed certain persons as a board of commissioners to make the subscription and to issue the bonds of the county covering the same. The state constitution provided that "all county officers shall be elected by the electors of the county." The contention was that the act of the legislature was in conflict with this constitutional provision insofar as it purported to appoint the persons named in the act as commissioners for the purposes thereof, since, it was contended, such commissioners were "officers" within the meaning of the constitutional provision just quoted. This court in the course of its decision said of the commissioners:

> "Such persons, in performance of their special duty, are in no proper sense, 'county officers.' They do not exercise any of the *political* functions of county officers, such as levying taxes, etc. They do not exercise 'continuously, and as a part of the regular and permanent administration of the government, any important public powers, trusts, or duties.' (*State* v. *Kennon*, 7 Ohio 562.)

> "An officer of the county is one by whom the county performs its usual *political* functions; *its functions of government.* Any other persons appointed by the legislature and the people of the county, would be as competent to execute the bonds of the corporation as the supervisors. They are the lawful agents of the people for this special purpose, and though nominated by the legislature, they cannot act without the assent of the citizens of the county, ascertained in the manner directed by law; and, having so acted, the county cannot now repudiate their acts." (Italics ours.)

It is apparent that in this decision this court was in accord with the view of Mechem that the most important characteristic of a public office is that it involves a delegation of some portion of the political, or sovereign, power.

The same view was expressed by the territorial court of Wisconsin before Wisconsin was admitted to statehood. In *United States* v. *Hatch,* 1 Pin. 182, it was held:

> "The organic law of the territory of Wisconsin (Act Cong. April 20, 1836), providing for the appointment of all civil officers by the executive, embraces only those officers in whom a portion of the sovereignty is vested, or to whom the enforcement of municipal regulations or the control of the general interests of society is confided, and does not include such officers as canal commissioners."

In *United States* v. *Hartwell,* 6 Wallace 385, this court at page 393, pointed out the other criteria noted by Mechem:

> "An office is a public station, or employment, conferred by the appointment of government. The term embraces the ideas of *tenure, duration, emolument, and duties.*
>
> "The employment of the defendant was in the public service of the United States. He was appointed pursuant to law, and his compensation was fixed by law. Vacating the office of his superior would not have effected the tenure of his place. *His duties were continuing and permanent,* not *occasional or temporary.* They

were to be such as his superior in office should prescribe" (Italics ours.)

These statements were afterwards approved in *United States* v. *Germaine*, 99 U. S. 508, 511, as well as in subsequent cases.

The same views obtain in the state courts. In *State* v. *Kennon*, 7 Ohio State, 546, 556, cited by this court in the *Sheboygan* case, *supra*, the ideas of duration, tenure, permanency and continuity are emphasized; in a New York case that is often quoted, *In the Matter of Oaths*, 20 Johnson, 492, 493, there is the same emphasis; and in *Opinion of the Judges*, 3 Greenl. 481, the Supreme Court of Maine said:

> "We apprehend that the term 'office' implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office; and the exercise of such power within legal limits constitutes the correct discharge of the duties of such office. The power thus delegated and possessed may be a portion belonging sometimes to one of the three great departments and sometimes to another; still it is a legal power which may be rightfully exercised, and in its effects it will bind the rights of others, and be subject to revision and correction only according to the standing laws of the state. An employment merely has none of these distinguishing features. A public agent acts only on behalf of his principal, the public, whose sanction is generally considered as necessary to give the acts performed the authority and power of a public act or law. And if the act be such as not to require such subsequent sanction, still it is only a species of service performed under the public authority and for the public good, but not in the exercise of any standing laws which are considered as rules of action and guardians of rights."

Other state cases in which similar views have been expressed are *Bunn* v. *People*, 45 Ill. 397; *Eliason* v. *Coleman*, 86 N. C. 235; *Commonwealth* v. *Swasey*, 133 Mass. 538; *Doyle* v. *Aldermen*, 89 N. C. 133; *Miller* v. *Supervisors*, 25 Cal. 98;

State v. *Kirk*, 44 Ind. 401; *Hill* v. *Boyland*, 40 Miss. 618; *Walker V. Cincinnati*, 21 Ohio St. 14; *People* v. *Nichols*, 52 N. Y. 478.

Since the question is as to the meaning of the terms, "office" and "officers," as used in the Philippine Autonomy Act, it seems not inappropriate to refer to an elaborate report of a Congressional committee to be found in House Reports of the Fifty-fifth Congress, Third Session, Vol. 2, H. R. No. 2205, in which, after examining the authorities discussed above as well as many others, the committee concluded:

> "In respect to visitors to the Military Academy, etc., the committee finds that those members of the House of Representatives appointed and designated as visitors to the Military Academy at West Point, to the Naval Academy at Annapolis, and the regents and directors and consulting trustees to the various public institutions in the District of Columbia and appointed by the Speaker of the House, are not, nor are any of them, officers under the United States within the meaning of the Constitution."

From the foregoing review of authorities, then, it is apparent that the most important characteristic of a public office is "that it involves a delegation of a portion of the sovereign functions of government to the person filling the office." Other criteria mentioned are "tenure, duration, emolument and duties." The duties must be "continuing and permanent, not occasional or temporary." In the light of these criteria it is obvious that the power of voting the government-owned stock in the National Coal Company is not an office within the settled judicial meaning of that term.

To the petitioners it seems that the matter is concluded by the leading case, *Bank of the United States* v. *Planters Bank of Georgia*, 9 Wheaton, 904, in which Chief Justice Marshall said:

"It is, we think, a sound principle, that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted. Thus, many states of this Union, who have an interest in banks, are not suable even in their own courts; yet they never exempt the corporation from being sued. The State of Georgia, by giving to the bank the capacity to sue and be sued, voluntarily strips itself of its sovereign character, so far as respects the transactions of the bank, and waives all the privileges of that character. As a member of a corporation, a government never exercises its sovereignty. It acts merely as a corporator, and exercises no other power in the management of the affairs of the corporation, than are expressly given by the incorporating act.

"The government of the Union held shares in the old Bank of the United States; but the privileges of the government were not imparted by that circumstance to the bank. The United States was not a party to suits brought by or against the bank in the sense of the constitution. So with respect to the present bank. Suits brought by or against it are not understood to be brought by or against the United States. *The government, by becoming a corporator, lays down its sovereignty, so far as respects the transactions of the corporation, and exercises no power or privilege which is not derived from the charter.*" (Italics ours.)

This case has been followed in *Bank of Kentucky* v. *Wister*, 3 Peters, 431; *Briscoe* v. *Bank of Kentucky*, 11 Peters 323; *Darrington* v. *Bank of Alabama*, 13 How. 12; *Curran* v. *State of Arkansas*, 15 How. 304; *Sloan Ship Yards Corporation* v. *U. S. Shipping Board Emergency Fleet Corporation*, 258 U. S. 549, and in other cases.

It should be noted that in the *Planter's Bank* case, Chief Justice Marshall says flatly that "the government by becom-

ing a corporator lays down its sovereignty, so far as respects the transactions of the corporation, and exercises no power or privilege which is not derived from the charter." This is obviously the fact. Every other stockholder has exactly the same sort of voting power as the government.

In its brief in opposition to the granting of the present writ of certiorari, the respondent cited, as determinative of the sovereign character of the power of voting government-owned stock in a private corporation, *Chesapeake & Delaware Canal Co.* v. *United States*, 250 U. S. 123. This case, however, rightly understood, is in no sense a qualification of the views of Chief Justice Marshall in the *Planter's Bank* case. In the *Chesapeake & Delaware* case, the United States, as a stockholder in the Canal Company, sued in 1911, to recover dividends that had been declared by that company in the years 1873, 1875 and 1876. By way of defense it was contended that the statute of limitations had run against the government since the government, it was contended, was in the position of an ordinary stockholder and could not claim governmental immunity from statutes of limitations and rules of laches. This court held that the defense was ill-conceived. In the course of the opinion it was said:

> "If the Government were asserting any rights with respect to the conduct of the corporation's affairs, its contracts or its torts, then its rights, duties and privileges would be no greater than those of any other stockholder. *Bank of the United States* v. *Planters' Bank*, 9 Wheat. 904, 907. But here the Government is pursuing a right to recover, which is not affected by its relation to the corporation as a stockholder. The declaration of the dividends which is admitted, gave it the status of a creditor of the company, and, thereafter, the right to recover was unaffected by any stockholder relation. To this must be added that the statutes and rules of limitation relate to the remedy to enforce the right, and not to the corporate relation from which the right springs, and that, since these dividends constituted 'public money' applicable to public purposes only, the

Government in collecting them was acting in its governmental capacity as much as if it were collecting taxes, such as those with which, no doubt, the stock which produced the dividends was purchased. The Circuit Court of Appeals answered this contention in a manner not to be improved upon, saying (223 Fed. Rep. 926, 928):

"'We may perhaps add a few words to say that the fallacy of the company's argument seems to lurk in the assumption that in this action the government is asserting a right in its character as a stockholder. Undoubtedly the right came into being because the government owns the stock but in no other respect has the suit anything to do with such ownership. The government is not suing as a stockholder; it is suing as a creditor, and in this character alone is it now to be considered.'"

The decision plainly proceeds on the well-settled rule that the declaration of corporate dividends creates a debt; that a debt is a debt from whatsoever source arising; and that the rules usual to debt situations therefore are applicable. It was distinctly recognized that the case is different where the government is "asserting any rights with respect to the conduct of the corporation's affairs"—such, for example, as the voting power of the corporate stock. That power is one common to all stockholders and is theirs only in that capacity. It is a right in its nature private and not sovereign.

Under the decisions of this court, such as the *Sheboygan* case, *supra*, the nature of the power here in question is obviously conclusive of the question whether it is a public office within the rules as to the executive power of appointment; but even if the power in question were sovereign in character, consideration of the other criteria mentioned in the cases would lead to the same conclusion. Thus, if duration and tenure are considered, it is clear that those sharing in the power of voting the government-owned stock have no tenure of the power apart from their tenure of the offices of Governor-General, President of the Senate, and Speaker of

the House of Representatives, or—what is the same thing—that the alleged office has no duration apart from the offices just named. Considering this fact, it is clear that the statute could not be regarded as creating a public office, even if a sovereign power were concerned. The power and duty of voting the government stock would not be a separate office but a mere additional duty attached to the offices already in existence.

In *Shoemaker* v. *United States*, 147 U. S. 282, this court held that statutes assigning to existing offices additional duties could in no sense be regarded as creating new offices and involving a Congressional invasion of the executive power of appointment of persons to public office. The court said at page 300:

> "There are several features that are pointed to as invalidating the act. The first is found in the provision appointing two members of the park commission, and the argument is, that while Congress may create an office, it cannot appoint the officer; that the officer can only be appointed by the President with the approval of the Senate, and that the act itself defines these park commissioners to be public officers, because it prescribes that three of them are to be civilians, to be nominated by the President and confirmed by the Senate. This, it is said, is equivalent to a declaration by Congress that the three so sent to the Senate are 'officers,' because the Constitution provides only for the nomination of 'officers' to be sent to the Senate for confirmation; and that it hence follows that the other two are likewise 'officers,' whose appointment should have been made by the President and confirmed by the Senate. As, however, the two persons whose eligibility is questioned were at the time of the passage of the act and of their action under it officers of the United States who had been theretofore appointed by the President and confirmed by the Senate, we do not think that, because additional duties, germane to the offices already held by them, were devolved upon them by the act, it was necessary that they should be again appointed by the President and confirmed by the Senate. It cannot be doubted,

> and it has frequently been the case, that Congress may increase the power and duties of an existing office without thereby rendering it necessary that the incumbent should be again nominated and appointed."

In the court below the respondent put great emphasis on the parenthetical phrase in the above excerpt—"germane to the offices already held by them." The phrase was given no emphasis in the opinion. Neither was it explained. It is submitted that it obviously can mean no more than that, in additions to official duty such as the court was there considering, Congress must observe the constitutional principle of tripartite division of governmental power. The respondent, for the purpose of its case, would like to spell out from this phrase some further limitation on the power of the legislature in grouping duties into public offices; but very little reflection is needed to show that in this regard the legislative power is plenary, with the single limitation above noted. That limitation, furthermore, goes only to the constitutionality of the grouping; it does not alter the fact that in such a case there is a mere addition to the duties of an office already existing and not the creation of a new office and an appointment thereto.

It must be apparent that such is the nature of the statute herein in question and that no new office was created. If no new office was created, there obviously could be no invasion of any power of appointment to public office supposed to be lodged elsewhere than in the Legislature by the Autonomy Act. The law on this point is well settled by the *Shoemaker* case. Any contention to the contrary is simply frivolous. The only question the case presents is whether the stock-voting power in the National Coal Company is a governmental power executive in character and so, insusceptible of being made an incident of offices in the legislative branch of the Insular Government.

POINT II.

The Philippine Legislature has all general legislative powers such as are exercised by states and territories.

Section 8 of the Philippine Autonomy Act provides:

> "General legislative power, except as otherwise herein provided, is hereby granted to the Philippine legislature, authorized by this act."

The phrase "general legislative power" was inserted in this section on motion of Congressman Towner, formerly Chairman of the Committee on Insular Affairs of the House of Representatives (Cong. Rec., vol. 51, pt. 16, p. 16233). In explaining his motion, Mr. Towner remarked:

> "The language which I am asking to have introduced as a substitute is that which is usually given and approved in the formation of constitutions for States and Territories, when they desire to confer legislative power. In other words, it is now well established under American law what general legislative power is, *and this legislature ought to have all general legislative power as is exercised by States and by Territories.*" (*Ibid.*) (Italics ours.)

In supporting the motion of Mr. Towner, Congressman Mann, the Republican floor leader in the House of Representatives, said:

> "Mr. Chairman, I am in favor of the amendment offered by the gentleman from Iowa. * * * *I am in favor giving the Philippine Legislature broader power than we would give to a territory of the United States.* What are we doing today? On one side we are trying to ascertain whether the Philippine people are competent for independence. Never in this world can you ascertain that by treating them like children. The only way that can be ascertained is to put responsibility upon them and see

whether they measure up to the responsibility. Now, as far as I am concerned, while I am not in favor of giving the Philippine Islands independence, separating them from the United States, *I am in favor of giving them control over their local affairs—exclusive control.* Of course we could change that law at any time. I am not in favor of letting the Philippine Government enter into foreign relations. I think the United States should stand for them in directing their foreign affairs, but I believe *they ought to have the right to govern themselves locally,* and you can not give them that right by putting a lot of restrictions in and saying they are not competent to do this, we are afraid they will do wrong about that, we will not trust them about some other things. We have got to trust them sooner or later. We have got to turn them loose as an independent people or else we have got to make them friends of ours if they remain under the jurisdiction of the Government of the United States, and the only way you can do so is to treat them like men. (Applause) We do not own all the wisdom of the world ourselves. We sometimes doubt about our own capacity for self-government. I do not know whether they will have self-government without trials and tribulations, though I do not assume that they will. We do not. We constantly have trouble amongst ourselves in the best and most enlightened parts of the United States. *Let the Philippine Government take their chance and see whether they can protect themselves in their own government,* and when that is determined it will be time enough for us to determine, first whether they want to be separated from the United States, which I do not think they will then want, and, second whether if they want it the United States feels at liberty to let them go." (Cong. Rec., vol. 51, pt. 16, p. 16234.) (Italics ours.)

In the course of his remarks, Mr. Mann was interrupted by Congressman Helm as follows:

"Mr. Helm: If I understand the gentleman correctly, he wants to give them *the fullest measure of power in the matter of legislation?*"

"Mr. Mann: I do."

(*Ibid.*) (Italics ours.)

Congressman Miller, speaking also in favor of Mr. Towner's motion, said:

> "Now, Mr. Chairman, the language of the paragraph as it now stands, to my mind is clearly improper. Just for a moment see what it does. All legislative powers are granted that heretofore have been granted, to what? To the Philippine Legislature—that is, the assembly—and to the Philippine Commission, and are hereby granted to the Philippine Government. That is, this paragraph grants to the legislature of the islands which are now creating only such power as heretofore has been granted to the assembly and to the commission, and that are also herein conferred upon the legislature, which is a complete restriction. As the gentleman from Illinois (Mr. Mann) has here clearly and emphatically stated, if we are to give these people anything like an opportunity to demonstrate their capacity for government, *we certainly must give them free rein, as far as possible, in matters of legislation.*
>
> "Now, if we turn over the page, we find this language in section 12:
>
> > 'That all local legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature.'
>
> "There is very clearly a conflict between the two. The last does not go even as far as the first. It say 'all local legislative.' I say now, Mr. Chairman, when that paragraph is reached I propose to strike out the word 'local'. *I think the Philippine Legislature should not be tied to Congress constantly by an apron string. I think the people of the islands should have an opportunity to legislate.* Let them draw upon their experience, their knowledge of the affairs of their own people, and act accordingly. *We should let them have free and full opportunity to do so.* But we have not done so in this paragraph. We have hedged them in, we have curbed them in, we have restricted their legislative activity to within very narrow limits." (Cong. Rec., vol. 51, pt. 16, p. 16234.) (Italics ours.)

Congressman Towner's motion was approved. (Cong. Rec., vol. 51, pt. 16, p. 16235.)

We have quoted at length from the record of the Congressional debate on the Jones bill, in order to show beyond cavil the intention and purpose of Congress to grant to the Filipino people, through their legislature, "control over their local affairs—exclusive control", "the right to govern themselves locally", "the fullest measure of power in legislation", "free rein, as far as possible, in matters of legislation".

Upon the proposition of giving to the Filipino people "the broadest liberty of action in all their local affairs" and of granting to the Philippine Legislature "all of the legitimate power of local self-government and self-taxation," there was complete agreement. Republicans and Democrats were of the same opinion. This was again manifest from the general remarks made on the bill as a whole.

Congressman Mann said:

> "If we deal with the Filipino people rightly, they will want to stay here. I have heard debate here about whether the Filipinos are capable of self-government. I assume, for the purpose of argument at least that they are capable of self-government. *I am in favor of giving to the Filipino people the broadest liberty of self-government*, retaining them under the American flag. (Applause on the Republican side.) The objection I have to the pending bill, in part, is that it has too many restrictions in it. If others do not offer amendments to remove these restrictions, I expect to offer a number of amendments to remove the restrictions upon the Philippine Legislature; and for this reason: *If we keep them, we ought to give them the widest liberty of action in all their local affairs.*" (Cong. Rec., vol. 51, pt. 16, p. 16025.) (Italics ours.)

Congressman Jones, the author of the measure, said:

> "This bill does not express in its terms all that he may have desired and hoped for, but I am in a position to say that he accepts it as *a definite and decided advance in the direction of a more autonomous government* and of proximate and definite independence.

"It give to his people a legislature of their own choosing in both of its branches; it removes the odious restriction upon the right of suffrage, which denies to the Filipino who can read and write a foreign language all participation in the civil affairs of his country; *it enables the Filipinos to make their own laws and to raise and to expend the public revenues,* and it provides for the early and thorough Filipinization of the civil service." (Cong. Rec., vol. 51, pt. 16, p. 16080). (Italics ours.)

Congressman Towner said:

"Gentlemen differ with regard to the matter; each has his individual opinion. But there is this common ground upon which we can stand. *We all agree that we should give them the largest measure of self-government of which they are capable now and at all times.* A larger measure of self-government should be given to them now by this bill than they possessed under the old law." (Cong. Rec., vol. 51, pt. 16, p. 16134.) (Italics ours.)

And, finally, Senator Hitchcock, as Chairman of the Senate Committee on Insular Possessions and Territories, said:

"The restrictions upon the legislative powers of the Philippine Legislature in the past have been considerable, because of the fact that the president has the power to appoint the upper house. But under this legislation, upon which the Senate and the House have now practically reached an agreement, both houses will be composed of Filipinos elected by the people. They have power to pass all laws with relation to taxation; they have power to pass all laws with relation to appropriations; they have power to pass all laws concerning the right of property with a few exceptions, which are ingrafted in the bill, just as Congress and our State legislatures are restrained by certain constitutional limitations.

"But while this act is virtually a constitution for the Philippine Islands and places a legitimate limit upon the power of the legislature, *it leaves to the Philippine Legislature virtually the power of local government.* It gives to the Philippine Senate the power to confirm appointments made by the Governor-General. It gives to

> the Philippine Legislature the power to say how high taxes shall be. It gives to the Philippine Legislature the power to say for what appropriations shall be. It gives to the Philippine Legislature the control over the municipalities of the Islands, the cities and the towns. It gives to the Philippine Legislature, with the approval of the President, the disposition of the public domain. *It gives to the Philippine Legislature, in short, all of the legitimate power of local self-government and self-taxation*, and it is in my opinion a measure wisely planned and carefully planned to increase beyond the point that has heretofore existed these powers of local self-government." (Cong. Rec., vol. 53, pt. 13, p. 12593.) (Italics ours.)

It seems plain that by section 8 of the Autonomy Act, the Philippine Legislature received all powers classified as legislative under the American theory of government unless such powers are elsewhere in that act expressly excepted or expressly given to another branch of the Insular Government. This fact should be remembered in considering the act here in question.

POINT III.

The voting of the government-owned stock in the National Coal Company is merely a part of the machinery for the management of that corporation and, under the Legislature's power to create corporations for the attainment of objects within its powers and to provide for the organization of such corporations and for their management, the Legislature may confer the voting power of the corporate stock as it sees fit.

Act No. 2705, as amended by Act No. 2822, it should be borne in mind, is the charter of the National Coal Company. It was enacted by the Philippine Legislature in the exercise

of its acknowledged authority to create corporations and to provide for their organization and management. Power to prescribe the method of voting the stock in a corporation is an incident of the power to provide for the organization and management of such corporations.

Congress has often created corporations to act for it in the attainment of those objects that are within its powers and has often given over the voting power in such corporations to persons other than executive officers of the Government, or—what is the same thing where the corporations have been without capital stock—it has given over the management of the corporations to such persons. Examples of the latter sort are the Smithsonian Institution and the National Home for Disabled Soldiers.

In incorporating the Smithsonian Institution, Congress provided:

> "The business of the institution shall be conducted at the city of Washington, by a Board of Regents, named the Regents of the Smithsonian Institution, to be composed of the Vice President, the Chief Justice of the United States, and three members of the Senate and three members of the House of Representatives; together with six other persons, other than members of Congress, two of whom shall be resident in the city of Washington; and the other four shall be inhabitants of some State, but no two of them of the same State" (28 Stat. 41).

The selection of the regents was provided for as follows:

> "The Board of Regents shall be appointed as follows: The Members of the Senate by the President thereof; the Members of the House by the Speaker thereof; and the six other persons by joint resolution of the Senate and House of Representatives. The Members of the House so appointed shall serve for the term of two years; and on every alternate fourth Wednesday of December a like number shall be appointed in the same manner, to serve until the fourth Wednesday in December, in the second year succeeding their appointment.

> The Senators so appointed shall serve during the term for which they shall hold, without reelection, their office as Senators. Vacancies, occasioned by death, resignation, or otherwise, shall be filled as vacancies in committees are filled. The regular term of service for the other six members shall be six years; and new elections thereof shall be made by joint resolutions of Congress. Vacancies occasioned by death, resignation, or otherwise may be filled in like manner by joint resolutions of Congress" (9 Stat. 102, 103).

The National Home for Disabled Volunteer Soldiers was incorporated very shortly after the close of the Civil War. The President, the Secretary of War, the Chief Justice, and such persons as may be associated with them, were constituted a corporation to have perpetual succession and all corporate powers and responsibilities. The main establishment of the Home was located at Dayton, Ohio, and branches have since been established at Togus, Maine; Milwaukee, Wisconsin; Hampton, Virginia; Marion, Indiana; Leavenworth, Kansas; Santa Monica, California, and Danville, Illinois (14 Stat. 10).

These institutions are entities entirely apart from the executive departments of the Government of the United States. They manage large properties derived from the Government and employed by them for the attainment of objects within the powers enjoyed by Congress. While the respondent may be right that Congress has but infrequently resorted to this type of extra-governmental entity for the attainment of the objects within its powers that it has power to do so, when it sees fit, is beyond all doubt. *McCulloch* v. *Maryland*, 4 Wheat. 316.

A more frequently used extra-governmental means for the attainment of Congressional objectives has been the privately owned stock company, such, for example, as those concerned in *California* v. *Pacific Railroad Company*, 127 U. S. 1, and *Luxton* v. *North River Bridge Company*, 153 U. S. 525. It is needless to multiply examples of such corporations, for the

power of Congress to employ them in the attainment of its ends is well settled. As stated by this Court in the *Pacific Railroad* case, *supra*, at page 39:

> "It cannot at the present day be doubted that Congress, under the power to regulate commerce among the several States, as well as to provide for postal accommodations and military exigencies, had authority to pass these laws. The power to construct, or to authorize individuals or corporations to construct, national highways and bridges from State to State, is essential to the complete control and regulation of interstate commerce."

and in the *Luxton* case, it was stated at page 529:

> "Congress, therefore, may create corporations as appropriate means of executing the powers of government, as, for instance, a bank for the purpose of carrying on the fiscal operations of the United States, or a railroad corporation for the purpose of promoting commerce among the States. *McCulloch* v. *Maryland*, 4 Wheat. 316, 411, 422; *Osborn* v. *Bank of United States*, 9 Wheat. 738, 861, 873; *Pacific Railroad Removal Cases*, 115 U. S. 1, 18; *California* v. *Pacific Railroad*, 127 U. S. 1, 39. Congress has likewise the power, exercised early in this century by successive acts in the case of the Cumberland or National Road from the Potomac across the Alleghenies to the Ohio, to authorize the construction of a public highway connecting several States. * * *
>
> "* * * it may, at its discretion, use its sovereign powers, directly or through a corporation created for that object, to construct bridges for the accommodation of interstate commerce by land, as it undoubtedly may to improve the navigation of rivers for the convenience of interstate commerce by water."

Plainly corporations such as those involved in the two foregoing cases exercise the functions that some executive departments would exercise if Congress chose to "use its sovereign powers directly." Yet despite this fact and despite the fact that such corporations are instruments through which Congress exercises portions of its sovereign power, it

has nevertheless been usual to confide to the private stockowners in such corporations the power of control through the stock-voting power.

It will probably be suggested that the voting power in such cases "belongs" to the private stockholders as owners; but voteless corporate stock is to-day too common for voting power to be regarded as a necessary incident of stock ownership. Doubtless the capital contribution of stockholders in such corporations as those involved in the foregoing cases is what moves Congress in such cases to confer the voting power upon such contributors; but that is merely to say that this circumstance is the reason for Congress' act, not that it is the ground of its power. It lies within that power to confer the voting power of the corporate stock as Congress shall think fit.

The close resemblance between the Bridge Company in the *Luxton* case, the Railroad Company in the *Pacific Railroad* case and the National Coal Company in the present case must be apparent. All three are stock corporations; all three are instruments of the respective legislatures for the accelerating of the economic development of the territories over which they enjoy jurisdiction—in the *Luxton* case, through the construction of an interstate bridge; in the *Pacific Railroad* case, through the construction of a transcontinental railway; and in the present case, through the development of the coal deposits of the Philippine Islands.

If the stock-voting control of such instruments for the attainment of legislative objects can, without inroad on the executive power, be confided to utter strangers to the government, it is hard to see how the confiding of that power to legislative officers can constitute such an inroad.

The answer of the respondent, of course, is that the government ownership of the Coal Company stock makes the difference that leads to the result that it desires.

But government ownership, this court has repeatedly held, is insufficient to blur the corporate lines that separate

such corporations as that herein concerned from the government that has created them.

Bank of the United States v. *Planters Bank of Georgia*, 9 Wheat. 904;
Bank of Kentucky v. *Wister*, 3 Peters, 431;
Briscoe v. *Bank of Kentucky*, 11 Peters, 324;
Darrington v. *Bank of Alabama*, 13 How. 12;
Curran v. *Arkansas*, 15 How. 304;
Sloan Shipyards Corporation v. *United States Shipping Board Emergency Fleet Corporation*, 258 U. S. 549;
United States v. *Strang*, 254 U. S. 491;
Skinner & Eddy Corporation v. *McCarl*, 275 U. S. 1.

The officers of such a corporation are *its* officers, not those of the Government. *United States* v. *Strang, supra.* Its liability to suit is its own. *Sloan Shipyards Corporation* v. *United States Shipping Board Emergency Fleet Corporation, supra.* And the auditing of its accounts and the control of its financial transactions are duties of its own corporate officers with which public officers have not, *ex officio*, anything to do. *Skinner & Eddy Corporation* v. *McCarl, supra.*

It is recognized, that where a legislative object requires for its attainment the engaging in activities essentially commercial in nature, the employment therein of the usual commercial methods free from governmental "red tape" and formality, is a distinct advantage. *Skinner & Eddy Corporation* v. *McCarl, supra,* pages 7 and 8. In such cases the legislature's privilege of choosing as its instrumentality either the usual machinery of the executive departments or a separate extra-governmental entity is firmly established. *Luxton* v. *North River Bridge Company* and other cases cited *supra.*

Where the extra-governmental entity is chosen, the cases indicate that insofar as the management of its corporate affairs is concerned, the corporation so created is in the fullest degree a separate entity. The only blurring of the corporate

lines has been in the extension of governmental privileges and protection to such corporations.

Russell Motor Car Company v. *United States*, 261 U. S. 514;
United States v. *Walter*, 263 U. S. 15;
Clallam County v. *United States*, 263 U. S. 341;
United States Grain Corporation v. *Phillips*, 261 U. S. 106, 111;
United States Emergency Fleet Corporation v. *Western Union Telegraph Company*, No. 113 October Term, 1927.

In a word, such corporations are treated as in all respects facilitating, and in none embarrassing, the attainment of the objective aimed at in their creation. To restrict the legislature in its power of determining the mode of management of such corporations would be to limit the flexibility and adaptability of the instrument for no discernible reason. The principle of tripartite division of governmental power has yet to be applied to the management of the corporations adopted as a means of exercising legislative power. Safeguards against the oppression of the individual have here no place. The stock-voting power in the National Coal Company plainly is but a detail in the mode of management by law provided for that corporation. As such, it is submitted, its addition to the duties of legislative officers in no way infringes the tripartite division of governmental power.

POINT IV.

Conceding *arguendo* that the corporate entity of the National Coal Company may be disregarded and that the power of voting the government-owned stock may be regarded as a duty of caring for government property, that voting power, as such a duty, is nevertheless properly confided to legislative officers.

On the theory that the duty of voting the government-owned stock was a duty of caring for a government property interest, the Philippine Supreme Court held that the duty of voting the stock was one executive in character. It said (R., p. 104):

> "Just as surely as the duty of caring for Government property is neither judicial nor legislative in character is it as surely executive."

The court's assertion obviously involves a disregard of the Coal Company as a separate entity. The government property is the stock itself and not the property in the management of which the stock is voted. That a stockholder has no property interest in the property of the corporation whose stock he holds is elementary law and the long line of cases already cited establish beyond all question that as respects the corporate affairs of a government-owned corporation, the government is only a stockholder. Conceding, however, that the Coal Company as a separate entity may be disregarded and that caring for its property may be deemed a caring for government property, the result for which respondent argues still would not follow; for the duty of caring for government property is not one executive in character.

Whatever plausibility the court's statement to the contrary may seem to have resides in the vagueness of the phrase "the duty of caring for government property." The instances that

the phrase brings to mind are the Treasury Department "caring" for the public funds, the Department of the Interior "caring" for the public lands, the War Department "caring" for the arsenals and supplies of war, and so on. But the "care" that these departments bestow is solely in "execution" of the directions given by Congress. The power to give such directions for the care of public property and to authorize specific dispositions and uses of such property is, by section 3 of Article IV of the Constitution, confided expressly and exclusively to Congress:

> "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; * * *"

It is well settled that neither the President nor the heads of any of the executive departments have any powers in respect to the use or disposal of public property apart from those given them by Congress.

Pan-American Petroleum Co. v. *United States*, 273 U. S. 456;
Mammoth Oil Co. v. *United States*, 274 U. S. 13;
United States v. *Hare* (C. C. A. 1867), Fed. Cas. No. 15303;
Knote v. *United States*, 10 Ct. Cl. 397;
Flores v. *United States*, 18 Ct. Cl. 352;
Lear v. *United States*, 30 Fed. 65;
United States v. *Nichol*, Fed Cas. No. 15879.

The authority of Congress may be given either generally in reference to a class of properties or specifically in reference to a particular property and Congress can withdraw a pending contest over the right of entry of public lands from the jurisdiction of the land department and itself determine the rights of the parties involved.

Emblen v. *Lincoln Land Co.*, 102 Fed. 559, aff'd 184 U. S. 660.

The powers of Congress in the care of government property are plenary. In that behalf the executive departments are no more than the agents or instrumentalities of Congress. It is plain that the duty of caring for government property, far from being "surely executive" is, in fact, legislative in character. The executive departments ordinarily perform the detail of such care; but to Congress belongs the power of direction and such direction may be as specific as Congress sees fit to make it.

While the constitutional provision just quoted and discussed is not of course directly applicable to the Philippine Legislature, it and the decisions under it are important as showing the scope of legislative power in respect of the care, management, use and disposal of government property under the American theory of government.

It will be recalled that by section 8 of the Autonomy Act it is provided that

> "General legislative power except as otherwise provided in this chapter, is granted to the Philippine Legislature."

There is nothing in the provisions of the chapter, relating either to the powers of the executive or to anything else, which indicates that the usual legislative powers in reference to the care of public property were excepted from the grant to the Philippine Legislature. Quite the contrary. The very next section of the Autonomy Act provides:

> "Section 9. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as has been or shall be designated by the President of the United States for military and other reservations of the Government of the United States, and all land which may have been subsequently acquired by the Government of the Philippine Islands by purchase under the provisions of sections sixty-three and sixty-four of the Act of Congress

> approved July first, nineteen hundred and two, except such as may have heretofore been sold and disposed of in accordance with the provisions of said Act of Congress, are hereby placed under the control of the government of said islands to be administered and disposed of for the benefit of the inhabitants thereof, *and the Philippine Legislature shall have power to legislate with respect to all such matters as it may deem advisable;* * * *" (Italics ours.)

The provision of section 19 in reference to the operation of the veto power of the Governor-General in the case of appropriation bills, as well as the provision covering failures to make routine appropriations, indicates that the general power of appropriating government property to particular uses is the Legislature's. Reading these provisions with the grant of general legislative power in section 8 and bearing in mind the scope of legislative power in this regard under the American theory of government, there can be no doubt, in the light of the debates in Congress at the time of the passage of the Autonomy Act, that the Philippine Legislature in respect of the care of public property has the same power as the Congress of the United States itself enjoys.

In the court below the respondent cited *Jorer* v. *Insular Government*, 221 U. S. 623, as establishing that the care of government is an executive function. In that case this court held that, in the absence of contrary legislation, the Governor-General of the Philippine Islands, as the successor of the old Spanish provincial governors, had power to alienate tide lands of the public domain. But that decision antedated the Autonomy Act by five years. Plainly in the light of section 9 of that act (replacing sec. 12 of the Act of July 1, 1902, 32 Stat. 691, 695, printed in the appendix to this brief), the *Jorer* case is no longer law.

Whether—when the implications of the Coal Company's separate existence are disregarded—the voting of the government-owned stock in the National Coal Company is

within the legislative power of caring for government property obviously depends on the functional nature of a stockholder's voting power. That voting power may be exercised to make rules and regulations—that is, by-laws; to determine the broad lines of policies to be pursued by the corporation, in the main, through the selection and removal of directors; and to authorize such radical steps as the disposal of the corporate assets, the dissolution of the corporation and the like. The similarity between these functions and those exercised by Congress in directing the care of government property is obvious.

Corporations such as the Coal Company are mere instruments for the accomplishment of legislative objectives. It would be something of an anomaly if the adoption of the corporate instrument had the effect of transferring to the executive the directive control which the legislature itself enjoys when it chooses to act through the machinery of the executive departments.

It is therefore submitted that the confiding to legislative officers of the power of voting government-owned stock in such a corporation as the National Coal Company is not only permissible but absolutely necessary to preserve that degree of legislative control over government property which the American theory of government plainly contemplates.

POINT V.

The law is settled that the officers of the National Coal Company are not officers of the Philippine Government and the fact that the voting power of the government-owned stock in the National Coal Company is to be exercised for the purpose, *inter alia*, of selecting such officers does not make that voting power a part of the Governor-General's asserted power of appointing persons to public office.

In the court below and in this court in opposition to *certiorari*, the respondent argued that since practically all of the capital stock of the Coal Company is owned by the Philippine Government and since the voting power of that stock carries the power to elect all of the directors of the Coal Company and through the directors to control the appointment of all of the officers and employees of the Company, that voting power in effect amounts to a power of appointing persons to public office.

This contention obviously rests on the view that the directors, officers and employees of the Coal Company are public officers. The reason given for this somewhat novel point of view is that the Coal Company is a public agency—"a convenient means through which the Philippine Government may discharge a portion of its public duties" (respondent's brief on petition, p. 26). *McCulloch* v. *Maryland*, 4 Wheat. 316, 408-424, and *Dartmouth College* v. *Woodward*, 4 Wheat. 518, 638-639, were cited; but nothing more.

The difficulty with the first citation is that "governmental agency" within the meaning of that decision connotes neither government ownership nor even incorporation by the government concerned. *California* v. *Central Pacific R. R. Co.*, 127 U. S. 1, and many other cases. Yet it is not believed that even the respondent would contend that in the absence

of these elements a corporation's officers could be deemed the officers of the government on whose behalf it might be acting.

As for the passage cited from the *Dartmouth College* case, it deals only with a government's power of amending the charters of its public corporations. In view of the possibility of 49% private ownership of the Coal Company and the actual fact of *some* private ownership thereof, it seems impossible to classify it as a public corporation within the *Dartmouth College* decision; and even if the Coal Company were a municipal corporation—the example *par excellence* of the public corporation—it would be a novel contention indeed that its officers were the officers of the government that created it. Governmental agency for a governmental object is not enough to erase the lines incorporation has drawn. As Chief Justice Marshall said in the *Dartmouth* case (p. 638):

> "The objects for which a corporation is created are universally such as the government wishes to promote."

Apparently, too, the respondent must have overlooked a very recent decision of this court dealing with an American analogue of the Philippine corporation herein involved—*i. e.*, *United States* v. *Strang*, 254 U. S. 489. That case came up on demurrer to an indictment which charged the defendant therein with having unlawfully acted as agent of the United States in transacting business for a partnership of which he was at the time a member, in that, while employed by the Emergency Fleet Corporation as inspector, he had signed and executed certain orders to the partnership for repairing and altering a Fleet Corporation vessel. Speaking through Mr. Justice McReynolds, this court said at page 493:

> "The demurrer was properly sustained. * * *
> "The corporation was controlled and managed by its own officers and appointed its own servants and agents who became directly responsible to it. Notwithstanding

all its stock was owned by the United States it must be regarded as a separate entity. Its inspectors were not appointed by the President, nor by any officer designated by Congress; they were subject to removal by the Corporation only and could contract only for it. In such circumstances we think they were not agents of the United States within the true intendment of §41.

"Generally agents of a corporation are not agents of the stockholders and cannot contract for the latter. Apparently this was one reason why Congress authorized organization of the Fleet Corporation. *Bank of the United States* v. *Planters' Bank of Georgia*, 9 Wheat. 904, 907, 908; *Bank of Kentucky* v. *Wister*, 2 Pet. 318; *Briscoe* v. *Bank of Kentucky*, 11 Pet. 257; *Salas* v. *United States*, 234 Fed. Rep. 842."

It will probably be suggested that the refusal under the circumstances of the *Strang* case to disregard the entity of the Fleet Corporation is not a reason for a similar refusal here; but the statute in the *Strang* case was obviously specifically relevant to the prevention of fraud in the transacting of government business. The tripartite division of governmental power, on the other hand, is aimed chiefly at the prevention of oppression and injustice to the individual. If the *Strang* case called for no disregard of corporate entities, it would seem that the present is an *a fortiori* case.

POINT VI.

Conceding, for the sake of argument only, that voting the government-owned stock in the National Coal Company is a public office and conceding that that company's directors, officers and employees are public officers, still the provisions of the statute that are under attack are unobjectionable.

While the petitioners confidently believe that all those contentions of respondent are irrelevant that are based on the assumption that this case presents any question in reference to the power to appoint to public office, they nevertheless desire to point out that those contentions are for other reasons without merit.

(a) *If voting the government-owned stock were an office, the President of the Senate and the Speaker of the House of Representatives would be eligible to hold it.*

Section 18 of the Autonomy Act provides:

> "No senator or representative shall during the time for which he may have been elected, be eligible to any office the election to which is vested in the legislature, nor shall be appointed to any office of trust or profit which shall have been created or the emoluments of which have been increased during such term."

It is argued that this section of the Autonomy Act is pertinent to the present case.

It is in the first place obvious that section 18 does not prohibit members of the Philippine Legislature from holding any other office whatsoever during their term of service in the legislature. There are two classes of offices only that they are prohibited from holding.

The first—"any office the election to which is vested in the legislature"—obviously has nothing to do with the present case. The statute under attack does not provide for the election by the Legislature of the members of the stock-voting committee. The statute designates the Governor-General, the President of the Senate and the Speaker of the House of Representatives once and for all as the members thereof. Section 18 of the Autonomy Act obviously was aimed at the prevention of petty politics amongst the legislators, such as their eligibility to offices within the gift of their colleagues might promote. This evil the statute in question clearly does not involve.

The second prohibition of section 18 of the Autonomy Act is

> "No senator or representative shall during the time for which he may have been elected, * * * be appointed to any office of trust or profit which shall have been created, or the emoluments of which shall have been increased, during such term."

This provision is not very happily worded, but what it means seems reasonably plain.

In the first place it should be noted that a legislator may be appointed to an office of trust or profit which has *not* been created "during such term"—that is, "during the time for which he may have been elected". (Emolument is not attached to the stock-voting power and so need not be discussed.) It is plain, therefore, that the prohibition is not against a legislator's holding a second office of trust or profit during his service as senator or representative. His disability, moreover, is not perpetual even as to those offices created as described in the act.

So far, as the petitioners understand, they and the respondent are in agreement as to the meaning of section 18; but respondent further contends that, as to offices created during a legislator's term of office, his disability continues as long as he shall be a member of the legislature. It therefore ar-

gues that the Honorable Manuel L. Quezon was, and is, ineligible to the stock-voting committee as President of the Senate, since at the time when Act No. 2705 was passed, Mr. Quezon then was, as he ever since has been, a member of the Senate and the President thereof.

With this contention petitioners cannot agree. It seems plain that section 18 can bear no such meaning. It is clear that, as used in the section the phrases, "during the time for which he may have been elected" and "during such term", are synonymous. The use of the word, "term", with its very definite meaning, in the last of these phrases is itself strong evidence that the meaning for which the respondent contends is not that which Congress intended; but the use of the perfect tense in the other phrase, it seems to the petitioners, definitely settles the question. The period of disability is obviously the "time" for which the legislator has already "been elected" at the time the supposed office is created. To express any other meaning the words employed would be most inept. It seems plain, therefore, that as to offices created during a legislator's term of office his disability continues only until the end of that term, whether thereafter he be re-elected as a legislator or not.

Section 18 of the Philippine Autonomy Act is obviously patterned upon clause 2 of section 6 of Article I of the Constitution of the United States. That clause apparently has not been passed upon by this court, but it has been construed by the Attorneys General and the construction by them adopted has been in accord with the contentions of the petitioners. 17 Op. A. G. 365; 21 Op. A. G. 211. See also Story on the Constitution, sec. 667, and 1 Watson on the Constitution, 336, 339; and compare art. IV, sec. 30, of the Constitution of Indiana, and *Baker* v. *Kirk*, 32 Ind. 517; also art. 2, sec. 5, of the Constitution of Florida, and *In Re Members of the Legislature*, 49 Fla. 269. In the light of these authorities and of the wording of the Autonomy Act itself it is submitted that the construction contended for by the petitioners is obviously that which is correct.

Under that construction the Honorable Manuel L. Quezon and the Honorable Manuel Roxas, as President of the Senate and Speaker of the House of Representatives respectively at the times herein important, would be eligible to membership in the stock-voting committee even if Act 2705 could be deemed to have created offices within the meaning of section 18 of the Autonomy Act. As has already been indicated, the committee was created on March 10, 1917, by the passage of the act on that date. At that time Mr. Roxas was not a member of the Philippine Legislature. He was first elected to the House of Representatives in 1922. Mr. Quezon, on the other hand, was a member of the Senate at that time; but his then term of office expired the first Tuesday of October, 1922.

The petitioners, however, again wish to insist on the artificiality of the view that Act 2705 created public offices and to point out that unless this artificial view is taken section 18 of the Autonomy Act is wholly irrelevant to the present case.

(b) *The Governor-General of the Philippine Islands has no general power of appointing persons to public office and the alleged "offices" herein involved would not be within the powers of appointment specifically given to him under the Autonomy Act, even if they were properly regarded as "offices" within the meaning of that act.*

In the court below the respondents contended (1) that the power of appointing persons to public office, having been held by this court to be executive in character (*Myers* v. *United States*, 272 U. S. 52), was included in "the supreme executive power" vested in the Governor-General by section 21 of the Autonomy Act; and (2) that, even if this were not so, the power of appointment is, by the ensuing clauses of that section, specifically given to the Governor-General. In the light of these contentions it was argued, as has already been set forth, that Act 2705 is an invasion of the Governor-General's power (1) in appointing the members of the committee created by the act, and (2) in empowering the members

of the committee to appoint the directors, and, through them, the officers and employees of the National Coal Company.

The language of section 8 of the Autonomy Act by which "general legislative power except as otherwise provided for in this chapter" was granted to the Philippine Legislature has already been referred to. There is in the Autonomy Act no cataloguing of the powers granted to the Legislature.

In contrast is the language of section 21. The first sentence is:

> "The supreme executive power shall be vested in an executive officer, whose official title shall be the 'Governor-General of the Philippine Islands'."

Following this is a long catalogue of particular powers which the Governor-General shall enjoy.

This catalogue would be needless if the initial words of the section constituted a grant of "general executive power," for the catalogued powers are such as would be included, without more, in such a grant. (See the text of the section in appendix, page 62.) Neither can the catalogue be regarded as a mere precautionary specification of the content of a grant of general executive power. Such a precautionary specification would surely include a blanket clause, such as "and all other powers executive in character." But there is no such clause in section 21.

It seems clear that the nature of the grant in the two cases is not the same. The respondent would read the word "supreme" in the grant of power to the Governor-General as synonymous with "general" in the grant of power to the legislature. That they are not synonymous is obvious. This court, for example, is a court of supreme jurisdiction but its jurisdiction is limited, not general. It seems clear, therefore, that, although the Governor-General is made the supreme executive of the Philippine Government, his executive power is not general but consists only of the powers enumerated in the catalogue contained in section 21.

The respondent's reply is the proviso of section 22:

> "That all executive functions of the Government must be directly under the Governor-General or within one of the executive departments under the supervision and control of the Governor-General."

This proviso, however, should be read in context with the remainder of the section and the section, in turn, in context with the entire act.

Section 22 is reprinted *in extenso* at page 65 of the appendix to this brief. It provides that the existing executive departments shall continue in existence until otherwise provided by the Philippine legislature and that the heads of these departments shall continue in office until the heads provided for by the Philippine legislature pursuant to the provisions of the Autonomy Act shall be appointed and qualified. It provides that the Philippine legislature may increase the number of executive departments or abolish any of them and that it may make such changes in the names and the duties thereof as it shall see fit; but it commands that

> "The Philippine legislature * * * shall provide for the appointment and removal of the heads of the executive departments by the Governor-General."

And then follows the proviso that "all executive functions of the Government" shall be under the Governor-General directly or else within one of the executive departments under his supervision and control.

It seems perfectly clear that the proviso is nothing more than a definition by the method of negation of the power given to the legislature in section 22. There can be no question that the legislature is by the proviso forbidden to usurp or to fritter away the powers of the Governor-General; but what those powers are is not stated. It can hardly be supposed that Congress by this proviso intended to wipe out all the careful definition of the powers of the Governor-General contained in the catalogue in section 21. It is that section

which defines the powers of the Governor-General as the supreme executive of the Philippine Islands and to that section the court must look in determining the extent of the powers conferred upon the Governor-General.

In the catalogue contained in that section the Governor-General's powers of appointment of persons to public office are specifically covered. The language is:

> • • • "He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as might be appointed by the Governor-General, prior to August 29, 1916, or such as he is authorized by the provisions of this chapter to appoint, or whom he may hereafter be authorized by law to appoint; but appointments made while the senate is not in session shall be effective either until disapproval or until the next adjournment of the senate. • • • He shall commission all authorized officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, • • •."

His powers of appointment, then, extend to three classes of officers. The first of these—"such officers as might be appointed by the Governor-General, prior to August 29, 1916"—is that upon which respondent chiefly relies (respondent's brief on petition, page 23). The argument is that by an executive order of the President of June 21, 1901, issued pursuant to the authority given by the "Spooner amendment" of March 2, 1901 (31 Statutes 910), it was provided that

> "The power to appoint civil officers heretofore vested in the Philippine Commission, or in the Military Governor, will be exercised by the Civil Governor with the advice and consent of the Commission."

That power to appoint "civil officers," it is argued, was ratified and continued in effect by section 1 of the Act of July 1, 1902, 39 Statutes 691 providing that

> "The action of the President of the United States • • • in creating the offices of Civil Governor and Vice

> Governor of the Philippine Islands and authorizing said Civil Governor and Vice Governor to exercise the powers to govern to the extent and in the manner and form set forth in the executive order dated June 21, 1901, * * * is hereby approved, ratified, and confirmed, and until otherwise provided by law the said Islands shall continue to be governed as thereby and herein provided, * * *".

It is further argued that the power of the Governor-General to appoint "civil officers" generally was continued in effect by virtue of the provision of section 21 of the Autonomy Act under discussion. The only change, it is contended, is that such appointments must now be made "by and with the advice and consent of the Philippine Senate."

The argument thus stated has a certain plausibility. But there is one difficulty and that one is fatal. Respondent's argument proves too much. It renders completely meaningless the grant of power contained in the language immediately following that under discussion—that is, the provision that the Governor-General shall appoint "such [officers] as he has authority by this Act to appoint, or whom he may hereafter be authorized by law to appoint."

It is elementary that in the construction of a statute the court should give effect to every word therein contained, if this be possible.

Reed vs. *Hoyt*, 13 Peters, 263;
U. S. vs. *Gooding*, 12 Wheat. 460;
Montclair Township vs. *Ramsdell*, 107 U. S. 147;
Peck vs. *Jenness*, 7 How. 612;
Heydenfeldt vs. *Dany Gold and Silver Mining Company*, 93 U. S. 634;
Rice vs. *Minnesota and Northwestern Railroad Company*, 1 Black, 358;
McKee vs. *United States*, 164 U. S. 287;
Pennington vs. *Coxe*, 2 Cranch, 33;
Kohlsaat vs. *Murphy*, 96 U. S. 153.

In the light of this canon of construction it is clear that the phrase "such officers as may now [*i. e.*, August 29, 1916] be appointed by the Governor-General" refers not to the whole class of "civil officers" as contended by the respondent but to the particular "civil officers" whom the Governor-General might at the time of the adoption of the Autonomy Act appoint—that is, the incumbents of civil offices then in existence. To that class the alleged office of voting the government stock in the National Coal Company obviously does not belong since it had no existence prior to the passage of Act No. 2705 on March 10, 1917.

The second class—"such as he is authorized by the provisions of this chapter [*i. e.*, the Autonomy Act] to appoint"—likewise is irrelevant to the present case. There is, of course, no specific mention in the Autonomy Act of the offices alleged herein to be concerned, and there is likewise no mention of any class of offices to which the members of the stock-voting committee or the directors, officers, and employees of the Coal Company can by any stretch of the imagination be deemed to belong.

To the third class—those "whom he may hereafter be authorized by law to appoint"—the offices here in question certainly cannot belong; for neither Act 2705 nor the amendatory act, No. 2822, confers upon the Governor-General any authority to appoint the members of the committee, and there is in no other statute any mention of these alleged offices either by name or by class.

Neither can the respondent argue, following the argument of the *Myers* decision, that the general responsibility for the faithful execution of the laws, which section 21 imposes upon the Governor-General, implies a power of appointing the members of the stock-voting committee. The members of the statutory committee are not charged by law with the duty of voting the government-owned stock in any particular way. For all that the statute provides to the contrary, the discretion of the members of the committee in voting the government-owned stock is precisely the same as that enjoyed by

any stock-holder with reference to the stock that he holds. There is no faithful execution of the laws with which these alleged officers are charged as subordinates of the Governor-General upon which to rest a line of argument similar to that followed by this court in the *Myers* decision. It may be added, moreover, that the power inferred in the *Myers* decision from the President's responsibility for the faithful execution of the laws was not a power of appointment but a power of removal from public office. It was in that case specifically recognized that, in its relation to this Presidential responsibility for the faithful execution of the laws, the power of removal from public office stands on a quite different footing from the power of appointment thereto.

It must be apparent therefore that the whole argument of the respondent based on a supposed invasion of the Governor-General's power of appointment falls to the ground. The Governor-General's powers are only those specifically given and those reasonably inferable as incidental to such specifically given powers.

Neither is there anything inconsistent with the terms of the Autonomy Act in a legislative exercise of a power of appointing persons to public office. Section 21, containing the grant of power to the Governor-General, plainly contemplates that the Senate shall participate even in those appointments which, by the terms of the section, are the Governor-General's special care; the section also plainly contemplates *some* appointments by governmental agencies other than the Governor-General; and section 18, discussed under (a), *supra*, plainly contemplates the selection of *some* officers by the legislative branch of the Philippine Government.

In view of these facts it seems clear that there would be nothing objectionable in the provisions of Act 2705 even if all the artificial assumptions of the respondent as to the nature of that act were conceded.

POINT VII.

The Philippine statutes here in question have received the implied sanction of Congress and should not be disturbed.

It will be recalled from the statement of facts herein that the stock-voting provisions of Act No. 2705 here under attack date back to March 10, 1917, when Act 2705 was passed by the Philippine Legislature. That act was then submitted to and signed by the then Governor-General as prescribed by section 19 of the Philippine Autonomy Act. In accordance with the further provisions of section 19, the act was thereafter also submitted to Congress, which reserved to itself under section 19 of the Autonomy Act the right of annulling, if it should see fit, any of the acts of the Philippine Legislature passed in pursuance of the Autonomy Act. The amendatory act, No. 2822, passed by the Philippine Legislature March 5, 1919, was likewise signed by the Governor-General and submitted to Congress. Neither act has up to date been annulled by Congress.

It will be recalled that Act No. 2822 re-enacted without change the stock-voting provisions of No. 2705 that are here under attack. Those provisions, then, have remained on the statute books undisturbed by Congress for eleven years. In addition, before the present dispute arose, the stock-voting committee had been functioning as the statute provided for a period of nine years. Both the Governor-General who approved the acts and his successor who finally launched the present attack upon the stock-voting provisions had during this nine years participated in the voting of the government-owned stock by the statutory committee.

In an early case, *Clinton* vs. *Englebrecht,* 13 Wall. 434, this court held that under such circumstances an inference

of Congressional approval is justified. It was said in that case (p. 446):

> "In the first place we observe that the law has received the implied sanction of Congress. It was adopted in 1859. It has been upon the statute-book for more than twelve years. It must have been transmitted to Congress soon after it was enacted, for it was the duty of the secretary of the Territory to transmit to that body copies of all laws, on or before the 1st of the next December in each year. The simple disapproval by Congress at any time, would have annulled it. It is no unreasonable inference, therefore, that it was approved by that body."

In *Gromer* vs. *Standard Dredging Company*, 224 U. S. 362, the following language from an opinion by Solicitor General Hoyt was quoted with approval (p. 371):

> "the relation of Congress to all territorial legislation is similar [certain organic acts of the States being cited], and thus it may be said that the exercise of local jurisdiction for ordinary municipal purposes over a reservation in a territory is valid until and unless disapproved by Congress." 26 Op. A. G. 91, 97.

And in *Tiaco* vs. *Forbes*, 228 U. S. 549, this court, though disposing of the case to the same effect on other grounds, went out of its way to say (p. 557):

> "By §86 of the act of July 1, 1902, all laws passed by the Philippine Government are to be reported to Congress, which reserves power to annul them. It is worthy of mention that the law under consideration was reported to Congress and has not been annulled."

In the light of these decisions, it would seem clear that where, as here, an act of a territorial legislature, though reported to Congress, has remained undisturbed by it for a period of years, such territorial statute is to be regarded as impliedly approved by Congress.

This has certainly been the understanding of the territorial courts. In *Chanco* v. *Imperial*, 34 Phil. Rep. 329, the Supreme Court of the Philippine Islands in adverting to this court's decision in the *Tiaco* case, *supra*, said (p. 331):

> "The Supreme Court of the United States has held that the Philippine Legislature has the same powers in the Philippine Islands, within the sphere in which it may operate, as Congress itself (*Tiaco* v. *Forbes*, 228 U. S. 549); and it has strongly intimated that when an act of the Philippine Legislature is reported to Congress and has not been annulled by that body it is a lawful and valid act."

See also *United States* vs. *Bull*, 15 Phil. Rep. 31, and *Baca* vs. *Perez*, 8 N. M. 187, 42 Pac. 162, 164, in which latter case it was said:

> "It is fundamental that congress, not rejecting territorial legislation, approves it,—the corollary of the statute which requires the submission of the acts of the legislature to congress, and declares that 'if disapproved they shall be null and of no effect.' * * * If wrong, it has been permitted to pass current as law by competent and controlling authority, and must be accepted as affirmation tantamount to congressional decree. Says the supreme court of the United States: 'The simple disapproval by congress, at any time, would have annulled it [Utah jury law]. It is no unreasonable inference, therefore, that it was approved by that body.' *Clinton* v. *Englebrecht*, 13 Wall. 445. Acquiescence by a party who might have repudiated is ratification."

The law on this point seems well settled.

Nothing cited by the respondent casts any doubt on this proposition. There was, first, the statement of Judge Anderson of the First Circuit in *Gallardo* vs. *Porto Rico Railway Light and Power Company*, 18 Fed. 2d 918, 923, to the effect that failure by Congress to annul a territorial act is entitled to some but not necessarily controlling weight. This statement, however, should be read with the statement of

the same judge in *Fajardo Sugar Company* vs. *Holcomb*, 16 Fed. 2d, 92, 96:

> "There is also a provision in section 34 that:
>
> 'All laws enacted by the legislature of Porto Rico shall be reported to the Congress of the United States, * * * which hereby reserves the power and authority to annul the same.'
>
> "If not thus annulled within reasonable time, there is a presumption that they are approved. *Tiaco* v. *Forbes*, 228 U. S. 549, 558, 33 S. Ct. 585, 57 L. Ed. 960; *Porto Rico* v. *American etc., R. R.*, 254 F. 369, 165 C. C. A. 589; *Camunas* v. *P. R. Ry* (C. C. A.) 272 F. 924, 931, and cases cited.
>
> "The result is that all Porto Rican legislation now on the statute books is—in a very real sense, though indirectly—the output of our federal government. Under such conditions, the court should not lightly assume that the tax acts of Porto Rico, now contended to be in conflict with section 20 of the Organic Act, are inconsistent and therefore invalid. Doubtless the relation of the Organic Act to the Porto Rican government is, in certain aspects, like the relation of a state Constitution to a state Legislature. *Camunas* v. *P. R. Ry., etc., Co.* (C. C. A. 272 F. 924, 928.
>
> "But the analogy is not complete; for, after all, the Organic Act is nothing but federal legislation, and Porto Rican legislation, approved expressly or impliedly by Congress, has exactly the same import."

The *Gallardo* case could of course not control as against the cases from this court already cited, but it seems unlikely that any qualification of those opinions was intended.

The only citation from the opinions of this court that was asserted to qualify the holdings in the *Englebrecht* and other cases cited, *supra*, was the statement of this court in *Myers* vs. *United States*, 272 U. S. 52, 170-171, in reference to the interpretive value of Congressional enactments implying an assertion of doubtful legislative power under the Constitution of the United States (respondent's brief on

petition, p. 33); but this citation involves a rather amazing confusion as to the problem presented in the present case. In the *Myers* case it was the meaning of the Constitution of the United States that was at issue—a law, that is, binding on the legislature, the interpretive value of whose acts was in the *Myers* case being assessed. In the present case the inaction of Congress is as to a matter completely within its power. *Binns* vs. *United States*, 194 U. S. 486.

That *mere* failure to annul is not necessarily conclusive may possibly be true; but where, as here, the failure is a failure continuing over a period of eleven years—almost the exact time mentioned in the *Englebrecht* decision, *supra*—and where, in addition, that failure is in the face of the public attention that Philippine affairs recently have had, the meaning of Congressional inaction can not be regarded as dubious; but even if it could be so regarded, the Wood-Forbes Report recommending (at p. 46 thereof) "that Congress declare null and void legislation which has been enacted diminishing, limiting, or dividing authority granted the Governor-General under Act No. 240 of the Sixty-fourth Congress, known as the Jones Bill", and drawing attention specifically to the National Coal Company (at p. 42) should set that doubt at rest. (See Document No. 325 H. R., Sixty-seventh Congress, Second Session). There can be no question that Congress is satisfied that Act 2705, as amended by Act 2822; of the Philippine Legislature shall remain the law.

The respondent has insisted (respondent's brief on petition, p. 32) that the Congressional reservation of power in section 19 of the Autonomy Act is a reservation of power legislative in character. With this, of course, the petitioners are in thorough agreement and the legislative power of Congress in the premises is plenary. As said by this court in *Binns* vs. *United States*, 194 U. S. 486, at p. 491:

> "It must be remembered that Congress, in the government of the Territories as well as of the District of Columbia, has plenary power, save as controlled by the

provisions of the Constitution, that the form of government it shall establish is not prescribed, and may not necessarily be the same in all the Territories. We are accustomed to that generally adopted for the Territories, of a *quasi* state government, with executive, legislative and judicial officers, and a legislature endowed with the power of local taxation and local expenditures, but Congress is not limited to this form. In the District of Columbia it has adopted a different mode of government, and in Alaska still another. It may legislate directly in respect to the local affairs of a Territory or transfer the power of such legislation to a legislature elected by the citizens of the Territory."

Upon express or implied approval by Congress an act of the Philippine Legislature becomes legally equivalent to an enactment by Congress directly. The function of the judiciary in such a case is not that of inquiring into the validity of a territorial act asserted to conflict with an organic act but that of interpreting two statutes *in pari materia* in which the specific provisions of one conflict with the general provisions of the other. In the interpretation of such statutes, it is a settled rule that the specific statute is to be treated as establishing an exception to the general rule established by the statute of more general import.

Townsend vs. *Little*, 109 U. S. 504;
United States vs. *Nix*, 189 U. S. 205;
Kepner vs. *United States*, 195 U. S. 125.

In view of the inaction of Congress during the last eleven years it is submitted that such is now the status of Act 2705 of the Philippine Legislature.

CONCLUSION.

In conclusion, the petitioners desire only to point out what seems to them the controlling consideration if, as seems improbable, this court should think that any of the foregoing contentions are of doubtful soundness. That consideration is that by the Philippine Autonomy Act Congress launched

an experiment in the Philippine Islands in local self-government. The debates in Congress at the time, which have been quoted above, show beyond all doubt an intention, shared by Republicans and Democrats alike, to give to the Philippine Legislature, the only entity in the Philippine Government directly representative of the Philippine people, a large freedom in dealing with local affairs. Skill and wisdom in local self-government can come only from experience. Only twelve years have passed since passage of the Autonomy Act. Congress has declined, so far, to disturb the experiment. In a similar spirit, it is respectfully submitted, this court should resolve all doubts in favor of the validity of the acts of the Insular Legislature. Those acts may be wise or unwise; but with that question this court has nothing to do. Congress, which is charged with the consideration of that question, has declined to interfere. In this situation, and in the light of the strictly legal aspects of the case hereinbefore considered, the judgment of the court below should be reversed and the title of the petitioners as directors of the National Coal Company confirmed.

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Counsel for Petitioners.

APPENDIX.

Act No. 2705 of the Philippine Legislature—An Act to create the National Coal Company.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE PHILIPPINES IN LEGISLATURE ASSEMBLED AND BY THE AUTHORITY OF THE SAME:

SECTION 1. A company is hereby organized, which shall be known as the National Coal Company, the principal office of which shall be in the city of Manila, and which shall exist for a period of fifty years, from and after the date of the approval of this Act.

SEC. 2. The said company shall be subject to the provisions of the Corporation Law in so far as they are not inconsistent with the provisions of this Act, and shall have the general powers mentioned in said Act and such other powers as may be necessary to enable it to prosecute the business of developing coal deposits in the Philippine Islands, and of mining, extracting, transporting, and selling the coal contained in said deposits.

SEC. 3. The capital of said company shall be three million pesos divided into thirty thousand shares of stock having a par value of one hundred pesos each, and no stock shall be issued at less than par nor except for cash.

SEC. 4. The Governor-General, on behalf of the Government of the Philippine Islands shall subscribe for fifty-one per centum of said capital stock, and the remainder shall be offered to the public. Ten per centum of the value of all stock subscribed shall be paid at the time of the subscription, and the balance thereof shall be paid at such time as shall be prescribed by the Board of Directors. The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

SEC. 5. The board of directors of the company shall consist of five members.

SEC. 6. There is hereby appropriated, out of any funds in the Insular Treasury not otherwise appropriated, the sum of one million five hundred and thirty thousand pesos, for investment in the stock of the National Coal Company to be acquired by the Insular Government: *Provided, however,* That the Insular Auditor shall not set up said sum on his books in full, but only such part or parts thereof as it may be necessary to invest for the development of the corporation created by this Act.

SEC. 7. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

SEC. 8. This Act shall take effect upon its approval.

Approved, March 10, 1917.

Act No. 2822 of the Philippine Legislature—An Act to amend certain sections of Act Numbered Twenty-seven hundred and five, entitled "An Act to create the National Coal Company."

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE PHILIPPINES IN LEGISLATURE ASSEMBLED AND BY THE AUTHORITY OF THE SAME:

SECTION 1. Section two of Act Numbered Twenty-seven hundred and five, entitled "An Act to create the National Coal Company," is hereby amended to read as follows:

"SEC. 2. The said company shall be subject to the provisions of the Corporation Law in so far as they are not inconsistent with the provisions of this Act, and shall have the general powers mentioned in said Act and such other powers as may be necessary to enable it to prosecute the business of developing coal deposits in the Philippine Islands, and of mining, extracting, transporting, and selling the coal contained in said deposits. Said company shall have priority of rights as regards the cutting and utilization of forest products for its own use in any public forest, in accordance with the Forest Law and the regulations and instructions now in force or which may hereafter be issued with regard to the cutting, gathering, and transportation or forest products."

SEC. 2. Section four of Act Numbered Twenty-seven hundred and five, entitled "An Act to create the National Coal Company is hereby amended to read as follows:

"SEC. 4. The Governor-General, on behalf of the Government of the Philippine Islands shall subscribe for at least fifty-one per centum of said capital stock, and the remainder may be offered to the public. Ten per centum of the value of all stock subscribed shall be paid at the time of the subscription, and the balance thereof shall be paid at such time as shall be prescribed by the Board of Directors. The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

SEC. 3. Section six of said Act is hereby amended to read as follows:

"SEC. 6. There is hereby appropriated, out of any funds in the Insular Treasury not otherwise appropriated, such sum as may be necessary to pay for the stock of the National Coal Company to be acquired by the Insular Government: *Provided, however,* That the Insular Auditor shall not set up said sum on his books in full, but only such part or parts thereof as it may be necessary to invest for the development of the corporation created by this Act."

SEC. 4. This Act shall take effect on its approval.

Approved, March 5, 1919.

GOVERNOR GENERAL'S EXECUTIVE ORDER

Executive Order No. 37, Philippine Official Gazette, Vol. XXIV, No. 135, November 11, 1926, p. 2419.

"Office of the Governor General of
the Philippine Islands.

Manila, November 9, 1926.

"Whereas it is held in an opinion of the Judge Advocate General of the United States Army, confirmed by an opinion of the Attorney General of the United States, received at the office of the Executive, November seventh, nineteen hundred and twenty-six, that the provisions of the statutes passed by the Philippine Legislature creating a 'Board of Control' or 'Committee' and enumerating the duties and powers thereof, with respect to certain corporations in which the Insular Government is the owner of stock, are nullities; that the remaining portions of said statutes are valid; that the duties imposed by said statutes upon said Board or Committee are executive in their nature, and subject to the provisions of the Organic Act relating to the executive functions; that said executive duties and powers may be performed as in other cases not specifically provided for by law.

"Now, therefore, acting under authority of said opinions the duties and powers heretofore exercised by said 'Board of Control' or 'Committee' shall, from and after this date be exercised solely by the Governor-General pursuant to the executive power vested in him by the Organic Act."

LEONARD WOOD,
Governor-General."

Act of Congress of July 1, 1902, 32 Stat. 691.

CHAP. 1369.—An Act Temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes.

* * * * * * * *

SEC. 12. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the government of said islands to be administered for the benefit of the inhabitants thereof, except as provided in this Act.

Act of Congress of August 29, 1916 (Autonomy Act), 39 Stat. 545.

CHAP. 416.—An Act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands.

* * * * * * * *

SEC. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act.

SEC. 9. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as has been or shall be designated by the President of the United States for military and other reservations of the Government of the United States, and all lands which may have been subsequently acquired by the government of the Philippine Islands by purchase under the provisions of sections sixty-three and sixty-four of the Act of Congress approved July first, nineteen hundred and two, except such as may have heretofore been sold and disposed of in accordance with the provisions of said Act of Congress, are hereby placed under the control of the government of said islands to be administered or disposed of for the benefit of the inhabitants thereof, and the Philippine Legislature shall have power to legislate with respect to all such matters as it may deem advisable: * * *

* * * * * * * *

SEC. 12. That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated "The Philippine Legislature": *Provided*, That until the Philippine Legislature as herein provided shall have been organized the existing Philippine Legislature shall have all legislative authority herein granted to the government of the Philippine Islands, except such as may now be within the exclusive jurisdiction of the Philippine Commis-

sion, which is so continued until the organization of the legislature herein provided for the Philippines. When the Philippine Legislature shall have been organized, the exclusive legislative jurisdiction and authority exercised by the Philippine Commission shall thereafter be exercised by the Philippine Legislature.

* * * * * * * *

SEC. 19. * * * The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the legislature without his approval.

All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same. If at the termination of any fiscal year the appropriations necessary for the support of the government for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be done, shall be deemed to be reappropriated for the several objects and purposes specified in said last appropriation bill; and until the legislature shall act in such behalf the treasurer shall, when so directed by the Governor General, make the payments necessary for the purposes aforesaid.

* * * * * * * * * *

SEC. 21. That the supreme executive power shall be vested in an executive officer, whose official title shall be "The Governor General of the Philippine Islands." He shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and hold his office at the pleasure of the President and until his successor is chosen and qualified. The Governor General shall reside in the Philippine Islands during his official incumbency, and maintain his office at the seat of government. He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor General, or such as he is authorized by this Act to appoint, or whom he may hereafter be author-

ized by law to appoint; but appointments made while the senate is not in session shall be effective either until disapproval or until the next adjournment of the senate. He shall have general supervision and control of all of the departments and bureaus of the government in the Philippine Islands as far as is not inconsistent with the provisions of this Act, and shall be commander in chief of all locally created armed forces and militia. He is hereby vested with the exclusive power to grant pardons and reprieves and remit fines and forfeitures, and may veto any legislation enacted as herein provided. He shall submit within ten days of the opening of each regular session of the Philippine Legislature a budget of receipts and expenditures, which shall be the basis of the annual appropriation bill. He shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the islands, or summon the posse comitatus, or call out the militia or other locally created armed forces, to prevent or suppress lawless violence, invasion, insurrection, or rebellion; and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privileges of the writ of habeas corpus, or place the islands, or any part thereof, under martial law: *Provided*, That whenever the Governor General shall exercise this authority, he shall at once notify the President of the United States thereof, together with the attending facts and circumstances, and the President shall have power to modify or vacate the action of the Governor General. He shall annually and at such other times as he may be required make such official report of the transactions of the government of the Philippine Islands to an executive department of the United States to be designated by the President, and his said annual report shall be transmitted to the Congress of the United States; and he shall perform such additional duties and functions as may in pursuance of law be delegated or assigned to him by the President.

SEC. 22. That, except as provided otherwise in this Act, the executive departments of the Philippine government shall continue as now authorized by law until otherwise provided

by the Philippine Legislature. When the Philippine Legislature herein provided shall convene and organize, the Philippine Commission, as such, shall cease and determine, and the members thereof shall vacate their offices as members of said commission: *Provided*, That the heads of executive departments shall continue to exercise their executive functions until the heads of departments provided by the Philippine Legislature pursuant to the provisions of this Act are appointed and qualified. The Philippine Legislature may thereafter by appropriate legislation increase the number or abolish any of the executive departments, or make such changes in the names and duties thereof as it may see fit, and shall provide for the appointment and removal of the heads of the executive departments by the Governor General: *Provided*, That all executive functions of the government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General. There is hereby established a bureau, to be known as the Bureau of Non-Christian Tribes, which said bureau shall be embraced in one of the executive departments to be designated by the Governor General, and shall have general supervision over the public affairs of the inhabitants of the territory represented in the legislature by appointive senators and representatives.

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Supreme Court of the United States

OCTOBER TERM, 1927.

No. 573.

GREGORIO AGONCILLO, BALDOMERO ROXAS and CATALINO LAVADIA,

Petitioners,

v.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

JOHN W. DAVIS,
JOSE ABAD SANTOS,
JAMES ROSS,
QUINTIN PAREDES,
CLARO M. RECTO,
Counsel for Petitioners.

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Supreme Court of the United States.

OCTOBER TERM, 1927.

GREGORIO AGONCILLO, BALDOMERO ROXAS and CATALINO LAVADIA, Petitioners, v. THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Respondent.	No. 573.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE PETITIONERS.

Previous Opinion in the Present Case.

The opinions in the Supreme Court of the Philippine Islands appear at pages 217 to 262 of the Record.

Jurisdiction.

The judgment of the Supreme Court of the Philippine Islands to be reviewed was entered on the 11th day of April, 1927 (R., p. 270). Petition for writ of certiorari was filed and granted, pursuant to Section 7 of the Act of February 13, 1925 (43 Statutes 936, 940).

Statement of the Case.

The judgment here under review was entered by the Supreme Court of the Philippine Islands in an original pro-

ceeding in *quo warranto* brought in the name of the Insular Government against the three petitioners, to oust them as directors of the Philippine National Bank. The judgment entered ousted them finally from their positions as directors of the bank.

The facts in the present case are stipulated (R., pp. 165 *et seq.*) and may be summarized as follows:

The Philippine National Bank was chartered by Act No. 2612 adopted by the Philippine Legislature on February 4, 1916. The act provided for 200,000 shares of stock of the value of 100 pesos each of which the Government was required to purchase 101,000 shares. The voting power of the government stock was vested in the Governor-General as was also the power of appointing, "by and with the consent of the Upper House of the Philippine Legislature," and the power of removing with like consent, the president and vice-president of the bank. It was provided that the bank president should also act as chairman of the board of directors, the other directors to be elected by the stockholders in accordance with the provisions of the General Corporation Law.

On February 20, 1918, the bank charter was amended by the passage of Act No. 2747. The only provision of Act 2747 that need be noted is that which vested the power of voting the government-owned stock in the National Bank "exclusively in a committee consisting of the Governor-General the President of the Senate and the Speaker of the House of Representatives."

On January 30, 1921, the charter of the Bank was again amended by the passage by the Legislature of Act No. 2938. This act made provision for the increase of the capital stock to 500,000 shares of 100 pesos each and provided that of the additional 300,000 shares the Government should purchase 153,000. The act also provided that the Government should purchase all the remaining shares of the first issue. Section 8 of the act provided that shares should not at any

time be sold to the public if as a result thereof the part of the capital stock held by private investors would equal or exceed the part owned by the Government of the Philippine Islands. The stock-voting provision was amended to read as follows:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control', composed of the Governor General, the President of the Senate, and the Speaker of the House of Representatives."

It was provided that the president and vice-president of the bank should be elected from amongst the board of directors and it was provided that the president should no longer act as chief executive of the bank. That function was thenceforth to be discharged by a general manager to be appointed by the board of directors with the advice and consent of the board of control.

The board of control was also specifically charged with the performance of certain duties in the management of the bank which may be summarized as follows:

(1) Foreign agencies of the bank might not be incorporated without the consent of the board of control.

(2) The bank might not rediscount commercial paper in cases of emergency without the approval of the board of control.

(3) The general manager of the bank was to be appointed and removed and his salary fixed by the board of directors acting with the advice and consent of the board of control.

(4) The board of control was entitled to receive from the manager of the bank any information in his possession with regard to the operations of the bank.

(5) It was provided that the chief of the auditing department of the bank, as well as other employees of that

department, should be appointed with the advice and consent of the board of control.

(6) The approval of the board of control was required for the payment of compensation to the president and vice-president of the bank should they perform the duties of other officers.

(7) The consent of the board of control was made necessary to permit the suspension of the requirement of maintaining the statutory proportion of reserve funds in the bank.

(8) The approval of the board of control was required to permit the bank to guarantee the payment of certain bonds and to buy bonds of other incorporated companies.

All of the foregoing Philippine legislation was duly signed by the Governor General as required by section 19 of the Philippine Autonomy Act and also submitted to Congress as that section of the Autonomy Act also requires. Under section 19, Congress has reserved to itself the power, if it sees fit, to annul any legislation passed by the Legislature of the Philippine Islands; but up to date none of the acts here in question have been so annulled. The attention of Congress was again specifically directed to this legislation by the Wood-Forbes Report (at p. 38 thereof) and the recommendation made (p. 46) "that Congress declare null and void legislation which has been enacted diminishing, limiting or dividing the authority granted the Governor General under Act No. 240 of the Sixty-fourth Congress, known as the Jones Bill [that is, the Autonomy Act of the Philippine Islands]." (Document No. 325, H. R., Sixty-seventh Congress, Second Session.)

Since the passage of the foregoing legislation relating to the Philippine National Bank there have been two other acts relating thereto—Acts Nos. 3033 and 3174—but these acts have not altered the mode of voting the stock in the Philippine National Bank. It may be noted, however, that the capital stock of the bank was reduced to the present 100,000 shares.

The present dispute arose late in 1926. Prior to December 23 of that year, A. Gideon, one of the directors of the Philippine National Bank, resigned solely with the idea of creating a vacancy and of presenting an occasion for the testing of the validity of the stock-voting provisions of the acts above referred to.

By section 51 of the by-laws of the bank was provided that vacancies in the board of directors should be filled by the vote of the remaining members of the board of directors, pending action by the stockholders at their annual meeting. At the meeting of the board of directors of the bank on December 23, 1926, following the resignation of Gideon it was proposed by one of the other directors that a special meeting of the stockholders be held to fill the vacancy in the board of directors created by the Gideon resignation and also to consider the advisability of repealing section 51 of the by-laws of the bank just referred to. It was frankly stated that the intent of the whole procedure was simply to provide an occasion for testing out the validity of the stock voting provisions of the acts relating to the Philippine National Bank.

Action, however, was postponed to a later meeting which took place December 28, 1926. At that meeting the resolution was discussed and voted on and defeated. Thereupon there was presented a petition signed by the Governor General, but not by the President of the Senate or the Speaker of the House of Representatives, on behalf of the Philippine Government and of five other shareholders of the Philippine National Bank, in which a demand was made that a special meeting of the stockholders of the bank be called for the purpose of considering the advisability of removing the three petitioners as directors of the bank, the repeal of section 51 of the by-laws of the bank, the filling of the vacancy caused by the Gideon resignation, and the election of other directors to replace the petitioners should their removal be determined upon. On the motion being put to vote, of the eight members of the board of directors present, four voted "yes", three voted "no", and the president of the board remained silent. The

president thereupon announced that the motion to call a special meeting as requested by the petition was approved and printed notices were therefore accordingly sent to every shareholder of record of the bank and notice of call was also given by publication in two newspapers of general circulation.

This special meeting was attended by twenty-six private persons owning and representing the owners of 94 of the privately owned shares and also by the Governor-General who asserted his right to attend the meeting in the name of and on behalf of the Philippine Government and to vote the 97,332 shares of government stock. The President of the Senate and the Speaker of the House of Representatives did not attend but sent a written protest against the holding of the meeting, pointing out that the meeting was unauthorized under the Corporation Law and under the by-laws of the bank, in that there had been neither a resolution to call the special meeting by a majority of the directors present at the meeting of the board on December 28, nor a request for the special meeting by those entitled to vote one-third in value of the capital stock, the signature of the Governor-General purporting to represent the government-owned stock being without effect since he was without right by himself to represent that stock.

The president of the bank, acting as chairman of the meeting, ruled that he could not recognize the right of the Governor-General to vote the government stock without the coaction of the President of the Senate and the Speaker of the House of Representatives as members of the board of control. He therefore ruled that a quorum of stockholders was not present at the meeting and so declared the meeting adjourned. The Governor-General protested this ruling. The president of the bank and some of the private shareholders then departed. Thereafter the Governor-General and the remaining stockholders organized by the election of a temporary chairman and secretary and proceeded with the business for which the purported meeting of stockholders had been called. It was determined by unanimous vote of the persons

present to remove the three petitioners as directors of the bank, to amend the by-laws by striking out section 51 and to elect in the place of the three petitioners Messrs. Manuel Yriarte, John Gordon and Leon M. Heras and to reëlect A. Gideon who had resigned from the board in order to precipitate the present dispute.

On January 21, 1927, a regular meeting of the board of directors of the bank was held at its office. The three petitioners, as well as the other directors of the bank whose seats are not being contested, were present. Mr. Heras, who had been elected by the purported meeting of stockholders attended by the Governor-General, had declined to act as director; but the other three persons elected at that meeting presented themselves, produced their certificates of election, and made demand that they be permitted to participate in the meeting of the board of directors of the bank and that the three petitioners withdraw and cease to act as directors. The president of the bank, as presiding officer, recognized the three petitioners as directors and they therefore participated as such in the ensuing meeting of the board of directors.

Shortly thereafter the present proceedings in *quo warranto* were instituted in the name of the Government of the Philippine Islands with the object, as before stated, of ousting the petitioners from their positions as directors of the Philippine National Bank. The Supreme Court of the Philippine Islands (Chief Justice Avancena and Justices Villamor and Villa-Real dissenting) held that the provisions of the acts of the Philippine Legislature relating to the Philippine National Bank which constituted the President of the Senate and the Speaker of the House of Representatives members of the board of control to act with the Governor-General in the voting of the government-owned stock in the Philippine National Bank and to discharge the other duties of the board of control as above set forth were invalid, but that the same provisions were valid in so far as they confided such powers and duties to the Governor General; that they constituted sufficient warrant for his sole exercise of these powers and duties, but that in the

absence of such statutory warrant these powers and duties would belong to the Governor-General by reason of their essentially executive character. The court therefore gave judgment ousting the three petitioners as directors of the Philippine National Bank.

The question herein presented for review is, then, whether those portions of Act 2938 of the Philippine Legislature are really invalid as in conflict with the provisions of the Autonomy Act of 1916 in constituting the President of the Senate and the Speaker of the House of Representatives members of the board of control of the Philippine National Bank.

THE ARGUMENT.

The Supreme Court of the Philippine Islands put its decision in the present case on the same grounds as it did its decision to the same effect in *Milton E. Springer et al.* v. *Government of the Philippine Islands,* which is now also before this court on writ of certiorari as No. 564. Since the legal questions presented in that case are also presented here, the petitioners refer the court to the argument contained in the brief filed by the petitioners in No. 564, which argument, *mutatis mutandis,* petitioners ask the court to consider as incorporated herein by reference.

Beyond what is stated in the brief in No. 564 little need be said. The only difference in the legislation in the two cases is in respect of the provisions of Act 2938 laying certain specific duties upon the board of control of the Philippine National Bank beyond the general duty of voting the government stock in the bank.

If the court will run over the summary of these specific duties found in the statement of facts, *supra,* or run over the sections of Act No. 2938 printed in the appendix, *infra,* it will see that these specific duties are all duties relating to the management of the bank. While it is, no doubt, unusual to confide to the discretion of the majority stockholder such matters as these specific duties cover, there is no rule of law which forbids a legislature in creating a corporation to pro-

vide for its management in this fashion if it see fit. Majority stockholder control, moreover, of the matters specifically covered by the provisions of Act 2938 under discussion exists indirectly in the case of all corporations through the stockholder control of the personnel of the board of directors. In the case of Philippine corporations this indirect control is very effective for the reason that by section 34 of Act No. 59 which is the General Corporation Law of the Philippine Islands directors of a corporation may be removed from office at any time by the vote of stockholders holding or representing two-thirds of the subscribed capital stock entitled to vote. (See appendix to this brief, *infra.*)

If it be contended that the corporate entity is to be disregarded and that the duties by these sections imposed upon the board of control are to be regarded as duties involving the care and management of government property, the considerations set forth in the brief submitted in No. 564 constitute a sufficient answer. The powers and duties covered by these sections of Act No. 2938 belong, for the purposes of the present case, in exactly the same category as the stock-voting power.

But there is a shorter answer to any contentions based on these sections, *viz.*, that they are not herein involved. The stock-voting power alone is concerned in the present case since only the title of petitioners as directors is at issue.

It was intimated in one of the opinions in the court below (R., p. 241) that even if it were granted that the President of the Senate and the Speaker of the House of Representatives had a right to participate in the voting of the government stock, still, since they were not present at the special stockholders' meeting referred to in the statement of facts, *supra*, and were not there represented by proxy, they could not object to the sole voting of the stock by the Governor-General as the only person representative of the government stock present at the stockholders' meeting. It was suggested that since Act No. 2938 contains no provisions as to how the stock shall be voted when there is a difference of opinion

among the members of the board of control, the members of the board present at the stockholders' meeting would have the right to vote the stock held by the government.

It seems quite obvious that this suggestion is without merit. The provision of section 4 of Act 2938 is that the stock shall be voted by the *board*—*i. e.*, by the board as an entity, not by its members individually. In the absence of specific provision it is to be assumed that a majority of the board would control. Certainly there is no warrant for assuming that in the case of difference of opinion they are entitled to vote individually or that the government vote is to be cast by whatever individual members happen to attend a stockholders' meeting.

Moreover, if as the court assumed the President of the Senate and Speaker of the House of Representatives were entitled to share in voting the government stock, they were also entitled to share in voting in respect of calling a special stockholders' meeting. The petition presented to the directors to hold the special meeting was not signed by either the President of the Senate or the Speaker of the House of Representatives and they promptly protested against the holding of the meeting. Even under the court's assumption that in the case of difference of opinion the members of the committee were to be entitled to vote the government stock individually, the petition was not such as to authorize the holding of the meeting under section 43 of the by-laws of the bank (R., p. 64). At most under this assumption, the Governor-General's signature could represent only one-third of the 97,332 shares held by the government—*i. e.*, 32,444. The other five signatures to the petition represented in all only 9 shares of stock (R., p. 182). This obviously is less than one-third of the outstanding 100,000 shares of stock in the Philippine National Bank (R., p. 188) and so, as the President of the Senate and Speaker of the House pointed out in their protest, less than the third required to authorize the calling of a special stockholders' meeting under section 43 of the by-laws (R., p. 64).

There was likewise no such resolution by the board of directors as under section 43 of the by-laws could authorize the meeting. A majority of the board of directors present at the meeting at which a special stockholders' meeting is determined upon is required by section 55 of the by-laws (R., p. 68). There were eight directors present at that meeting in the present case, of whom four voted for the holding of the meeting, three against it and one, the chairman, remained silent.

The want of authority for the stockholders' meeting from this point of view was also pointed out by the President of the Senate and the Speaker of the House in their protest (R., p. 191). Since, then, there was no sufficient authorization of the meeting if the President of the Senate and the Speaker of the House were entitled to participate in the voting of the government stock, there can be no doubt that their prompt protest saved their rights. All that happened at the purported stockholders' meeting was a nullity unless the Governor-General was entitled under all circumstances alone to vote the government stock. It is thus clear that there is no special ground presented in this case to justify the judgment of the court below if the President of the Senate and the Speaker of the House be entitled to participate in the voting of the government stock.

It is submitted that the President of the Senate and the Speaker of the House were entitled to such participation in the stock-voting power and that the judgment of the court below should be reversed and the title of the petitioners to their positions as directors of Philippine National Bank confirmed.

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APPENDIX.

ACTS OF THE PHILIPPINE LEGISLATURE.

Act No. 2612 of the Philippine Legislature.

Sec. 3 fixes capital at 20,000,000 pesos; 200,000 shares; 100 pesos per share.

"Sec. 4. The Government of the Philippine Islands not later than January thirty-first, nineteen hundred and seventeen, shall purchase one hundred and one thousand shares at par of the said National Bank, the payment for said shares of the Government to be made as hereinafter provided. Ninety-nine thousand shares of said capital stock shall be offered to the public at par as hereinafter provided."

Sec. 5 appropriates for the payment of Government shares, 1,300,000 pesos out of general funds of the Insular Treasury, and the further sums of 1,000,000 pesos on or before July 31, 1916, and 1,000,000 pesos on or before January 31, 1917, "which shall be invested from the insurance fund created by Act No. 1728, the public works bonds sinking fund created by Act No. 1729, and the friar lands bonds sinking fund created by Act No. 2550", and then continues: "* * * *And provided further*, That the voting power of all stock purchased directly by the Philippine Government as an investment from the general funds of the Government and the voting power of all stock purchased for the benefit of the insurance fund, of the public works bonds sinking fund, and of the friar lands bonds sinking fund, shall be vested exclusively in the Governor General."

"Sec. 20. The affairs and business of the National Bank shall be managed by a board of directors consisting of the president of the Bank, who shall be chief executive thereof and chairman of the board at the same time, one vice-president who shall assist the president and act in his stead in case of absence or incapacity, and five members elected as hereinafter provided. * * *."

"Sec. 21. The president and vice-president shall be appointed by the Governor General, by and with the consent of the upper house of the Philippine Legislature, and may be

removed for cause by said Governor General, by and with the consent of the said house. The five remaining members shall be elected and may be removed in accordance with the provisions of Act No. 1459, the Corporation Law."

"Sec. 47. All profits assigned as dividends to the shares of the Government shall be paid into the Insular Treasury for the general funds thereof and shall be available for any appropriation."

Act No. 2747 of the Philippine Legislature.

"Sec. 4. * * * The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor General, the President of the Senate, and the Speaker of the House of Representatives."

Act No. 2938 of the Philippine Legislature.

Sec. 3 increases Bank's capital from 20,000,000 pesos to 50,000,000 pesos by a new "second" issue of 300,000 shares.

"Sec. 4. The Government of the Philippine Islands not later than June 30, 1921, shall purchase all remaining shares of the first issue and part of those of the second issue to the aggregate number of not less than one hundred and fifty-three thousand, at par, the payment for said shares of the Government to be made as hereinafter provided. The remaining shares may be offered to the provincial and municipal governments or to the public at a price not below par which the board of directors of the said bank shall from time to time determine; *Provided,* That the Government of the Philippine Islands upon agreement with the board of directors of the bank, may at any time after June 30, 1921, purchase all or part of the stock on hand at a price not below par.

"The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Island shall be vested exclusively in a board the short title of which shall be "Board of Control," composed of the Governor General, the President of the Senate, and the Speaker of the House of Representatives."

"Sec. 5. There are hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated, such sums as may be necessary for the payment of the shares to be purchased by the Government of the Philippine Islands; *Provided,* That the capital and surplus of the Agricultural Bank of the Philippine Islands shall be applied primarily to said payment; *And provided further,* That no sum shall be set up on the books of the Auditor until it shall be necessary to make the payment or payments authorized by this Act."

"Sec. 8. At no time shall shares be sold to the public, if, as a result thereof, the part of the capital stock held by private investors will equal or exceed the part owned by the Government of the Philippine Islands."

"Sec. 10. Said National Bank is hereby authorized:

* * * * * * * * *

(f) To invest a sum not exceeding ten per cent of its paid up capital in the purchase of shares of stock of any banking

corporation constituted under the laws of any State of the United States and to hold the same: *Provided, however,* That, subject to resolution of the board of directors and the approval of the Board of Control, it may incorporate any of its foreign agencies now or hereafter established, under the laws of the country or estate [*sic*] where the same may be located, and may retain the stock of such corporation as an investment."

"Sec. 14. Said National Bank is hereby authorized to issue circulating notes * * * *Provided, however,* That in case of emergency, and subject to the approval of the Board of Control, the Secretary of Finance may authorize the National Bank of rediscount commercial paper of not over six months' maturity secured by exports or imports, and may issue against said commercial paper circulating notes * * *.

Sec. 16 increases number of directors to nine.

Sec. 17 provides that directors shall elect president and vice-president from amongst themselves.

"Sec. 18. The orders and resolutions of the board of directors shall be carried out by a general manager who shall be chief executive of the bank and shall be paid an annual salary to be fixed by the board of directors, with the approval of the board of control, and an assistant general manager who * * * shall be paid a salary to be fixed by the board of directors, with the approval of the board of control. The general manager shall be appointed by the board of directors, with the advice and consent of the board of control, and may be removed in a like manner."

"Sec. 21. The Secretary of Justice shall be attorney for said National Bank * * *."

"Sec. 22. The Insular Auditor shall be *ex officio* auditor of the National Bank and shall, with the advice and consent of the board of control, appoint a representative who shall be chief of the auditing department of the bank. All the other employees of the department shall be appointed by the Insular Auditor who, with the approval of the board of control, shall fix the salaries of the same as well as that of his representative, the chief of the department. * * * The representative of the Insular Auditor shall make a quarterly re-

port on the condition of the bank to the Governor General of the Philippine Islands, to the Secretary of Finance, to the Board of Control, to the Insular Auditor, and to the board of directors of said bank * * *."

"Sec. 23. All the other officers and employees of the National Bank shall be appointed and removed by the Board of Directors on recommendation of the general manager. Said officers and employees shall not be subject to the Civil Service Law, and their duties and compensations shall be fixed by the general manager, with the approval of the board of directors: *Provided, further,* That whenever the president or vice-president, by order of the Board of Directors, shall temporarily or permanently perform duties incumbent upon other officers or employees, they may be granted compensation additional to the bonus fixed by this Act for the president and vice-president; but the resolution of said board shall not take effect until the written approval of the members of the Board of Control has been obtained. The orders of said board of directors in this respect may be modified or repealed at any time, provided they are approved in each case by the Board of Control."

"Sec. 38. All profits assigned as dividends to the shares of the Government shall be paid into the Insular Treasury, for the general funds thereof."

"Sec. 44. The National Bank shall at all times keep on hand * * * a sum in lawful money * * * computed as follows:

"Twenty-five per cent of the circulating notes outstanding, * * *.

"Twenty per cent of the demand deposits outstanding * * *: *Provided, however,* That the Secretary of Finance at the request of the board of directors of the bank, duly approved by the Board of Control, whenever in his judgment the general interests of the country require it, shall be authorized to suspend for such period as may be necessary, the requirement of maintaining the proportion of the reserve specified in this Act. * * *".

"Sec. 45. The National Bank is hereby authorized to guarantee * * * bonds issued by duly incorporated companies for the erection of and addition or additions to industrial plants or manufactories principally used for the manufacture and preparation of the products of the Philippine Islands;

Provided, however, The such guarantee shall only be lawful when approved by the Board of Control.

"Subject to the same approval, the National Bank is hereby authorized to purchase bonds issued by any duly incorporated company engaged in the manufacture or preparation of products in the Philippine Islands. * * *."

Act No. 1459 of the Philippine Legislature (General Corporation Law.

"Sec. 34. Directors of the corporation may be removed from office by vote of two-thirds of the members entitled to vote, or if the corporation be a stock corporation, by a vote of the stockholders holding or representing two-thirds of the subscribed capital stock entitled to vote: *Provided, however,* That such removal shall take place either at a regular meeting of the corporation or at a special meeting called for the purpose * * *."

Acts of Congress

The pertinent acts of Congress of the United States will be found printed in the appendix to the brief submitted in No. 564, Milton E. Springer v. Philippine Islands.

Office Supreme Court, U. S.
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CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1927.

No. 564.

MILTON E. SPRINGER, DALMACIO COSTAS, AND ANSELMO HILARIO,

Petitioners,

v.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

Respondent.

No. 573.

GREGORIO AGONCILLO, BALDOMERO ROXAS, AND CATALINO LAVADIA,

Petitioners,

v.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

Respondent.

ON PETITIONS FOR CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR RESPONDENT IN RESPONSE TO PETITIONS.

"BOARD OF CONTROL CASES."

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In the Supreme Court of the United States

OCTOBER TERM, 1927.

No. 564.

MILTON E. SPRINGER, DALMACIO COSTAS, AND ANSELMO HILARIO,

Petitioners,

v.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

Respondent.

No. 573.

GREGORIO AGONCILLO, BALDOMERO ROXAS, AND CATALINO LAVADIA,

Petitioners,

v.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

Respondent.

ON PETITIONS FOR CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR RESPONDENT IN RESPONSE TO PETITIONS.

"BOARD OF CONTROL CASES."

OPINIONS BELOW.

The opinion of the Supreme Court of the Philippine Islands in case No. 564, *supra*, Milton E. Springer, et al (the "National Coal Company case"), April 1, 1927, written by Mr. Justice

Malcolm and concurred in by Justices Street, Ostrand, Johns and Romualdez, together with the separate concurring opinion of Mr. Justice Johnson and the dissenting opinion of Chief Justice Avanceña and Justices Villamor and Villa-Real (Case 564, R. 62–113, 114–177, 178–202) is published in the Official Gazette of the Philippine Islands No. 56, May 10, 1927, pages 1232, *et seq.*, but has not yet appeared in the official "Philippine Reports."

In Case No. 573, *supra*, Gregorio Agoncillo, et al (the "Philippine National Bank case"), the opinion of the Insular Supreme Court, likewise of April 1, 1927, also by Mr. Justice Malcolm and concurred in by Justices Street, Ostrand, Johns and Romualdez, together with the separate concurring opinion of Mr. Justice Johnson and the dissenting opinion of Chief Justice Avanceña and Justices Villamor and Villa-Real (Case No. 573, R. 216–226, 227–261, 261–262) is likewise published in the Philippine Official Gazette No. 67, June 4, 1927, pages 1488, *et seq.*, but has not yet appeared in the Philippine Reports.

JURISDICTION.

These cases were both original petitions for *quo warranto* in the Supreme Court of the Philippine Islands. The final judgment of that court was entered in each case on April 11, 1927 (Case No. 564, R. 212–213; Case No. 573, R. 270). The petition for certiorari in case No. 564 was filed in this court on September 28, 1927; and, in Case No. 573, on October 1, 1927; in each case within less than six months after the entry of the final judgment below. Jurisdiction to grant the writs exists under Section 7 of the Act of February 13, 1925.

The Insular Supreme Court had original jurisdiction under Section 26 of the Organic Act (*infra*, p. 13) and Sections 197 and 204 of the Philippine Code of Civil Procedure.

THE QUESTIONS.

1. Under the Organic Act, may the Philippine Legislature place the voting power of Government owned stock in corporations of those Islands, in which the Philippine Government owns more than a majority of the capital stock (Philippine

National Bank; National Coal Company), in the hands of a committee, named by the Legislature, a majority of whom are members and officers of the Legislature itself;—("Committee" for the Coal Company; "Board of Control" for the Bank), composed of the Governor General, the President of the Philippine Senate, and the Speaker of the Philippine House of Representatives?

2. Specifically, are the provisions to that effect, contained in Section 4 of the National Coal Company charter (Act No. 2705, *infra*, p. 3) and in Section 4 of the charter of the Philippine National Bank as amended (Act No. 2938 amending Act No. 2612 as theretofore amended by Act No. 2747, *infra*, p. 6), valid?

STATUTES INVOLVED.

PHILIPPINES.

NATIONAL COAL COMPANY. CHARTER.

Act No. 2705, approved March 10, 1917.

> "SEC. 4. The Governor General on behalf of the Government of the Philippine Islands shall subscribe for fifty-one per centum of said capital stock and the remainder shall be offered to the public * * *. The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor General, the President of the Senate, and the Speaker of the House of Representatives."
>
> "SEC. 6." (Appropriates 1,530,000 pesos for investment in the stock.)

Act No. 2822, amending Sections 2, 4, and 6 of the preceding Act (No. 2612); approved March 5, 1919.

> "SEC. 2." (Directs the Governor General to subscribe for "*at least* fifty-one per centum of said capital stock"; instead of for exactly 51% as originally provided.)

Act No. 2612, February 4, 1916.

"SEC. 3." (Fixes capital at 20,000,000 pesos; 200,000 shares; 100 pesos per share.)

"SEC. 4." The Government of the Philippine Islands not later than January thirty-first, nineteen hundred and seventeen, shall purchase one hundred and one thousand shares at par of the said National Bank, the payment for said shares of the Government to be made as hereinafter provided. Ninety-nine thousand shares of said capital stock shall be offered to the public at par as hereinafter provided."

"SEC. 5." (Appropriates for the payment of Government shares, 1,300,000 pesos out of general funds of the Insular Treasury, and the further sums of 1,000,000 pesos on or before July 31, 1916, and 1,000,000 pesos on or before January 31, 1917, "which shall be invested from the insurance fund created by Act No. 1728, the public works bonds sinking fund created by Act No. 1729, and the friar lands bonds sinking fund created by Act No. 2550"), * * * "*And provided further*, That the voting power of all stock purchased directly by the Philippine Government as an investment from the general funds of the Government and the voting power of all stock purchased for the benefit of the insurance fund, of the public works bonds sinking fund, and of the friar lands bonds sinking fund, shall be vested exclusively in the Governor General."

"SEC. 20. The affairs and business of the National Bank shall be managed by a board of directors consisting of the president of the Bank, who shall be chief executive thereof and chairman of the board at the same time, one vice president who shall assist the president and act in his stead in case of absence or incapacity, and five members elected as hereinafter provided. * * *."

"SEC. 21. The president and vice president shall be appointed by the Governor General, by and with the consent of the upper house of the Philippine Legislature, and may be removed for cause by said Governor General, by and with the consent of the said house. The five remaining members shall be elected and may be removed

in accordance with the provisions of Act No. 1459, the Corporation Law."

"SEC. 25. The Attorney General of the Philippine Islands shall be attorney for the said National Bank; * * *."

"SEC. 26. The Insular Auditor shall be *ex officio* auditor of the National Bank. * * *."

"SEC. 47. All profits assigned as dividends to the shares of the Government shall be paid into the Insular Treasury for the general funds thereof and shall be available for any appropriation."

Act No. 2747. An act to amend in certain particulars Act No. 2612, entitled "An Act Creating the Philippine National Bank"; approved February 20, 1918.

"SEC. 4." * * * "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor General, the President of the Senate, and the Speaker of the House of Representatives."

"SEC. 5." (Amends Section 5, *inter alia*, by striking out the original provision which had placed in the Governor General the voting power of the Government stock.)

Act No. 2938. An act to amend Act No. 2612, entitled "An Act creating the Philippine National Bank," as amended by Act No. 2747. Approved January 30, 1921.

"SEC. 3." (Increases Bank's capital from 20,000,000 pesos to 50,000,000 pesos by a new "second" issue of 300,000 shares.)

"SEC. 4. The Government of the Philippine Islands not later than June 30, 1921, shall purchase all remaining shares of the first issue and part of those of the second issue to the aggregate number of not less than one hundred and fifty-three thousand, at par, the payment for said shares of the Government to be made as hereinafter provided. The remaining shares may be offered to the

provincial and municipal governments or to the public at a price not below par which the board of directors of the said bank shall from time to time determine: *Provided*, That the Government of the Philippine Islands upon agreement with the board of directors of the bank, may at any time after June 30, 1921, purchase all or part of the stock on hand at a price not below par.

"The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board the short title of which shall be **"Board of Control,"** composed of the Governor General, the President of the Senate, and the Speaker of the House of Representatives."

"SEC. 5. There are hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated, such sums as may be necessary for the payment of the shares to be purchased by the Government of the Philippine Islands: *Provided*, That the capital and surplus of the Agricultural Bank of the Philippine Islands shall be applied primarily to said payment: *And provided further*, That no sum shall be set up on the books of the Auditor until it shall be necessary to make the payment or payments authorized by this Act."

"SEC. 8. At no time shall shares be sold to the public, if, as a result thereof, the part of the capital stock held by private investors will equal or exceed the part owned by the Government of the Philippine Islands."

"SEC. 10. Said National Bank is hereby authorized:

* * * * *

(*f*) To invest a sum not exceeding ten per cent of its paid up capital in the purchase of shares of stock of any banking corporation constituted under the laws of any State of the United States and to hold the same: *Provided, however*, That, subject to resolution of the board of directors **and the approval of the Board of Control,** it may incorporate any of its foreign agencies now or hereafter established, under the laws of the country or estate" (State) "where the same may be located, and may retain the stock of such corporation as an investment."

"SEC. 14. Said National Bank is hereby authorized to issue circulating notes * * * *Provided, however*, That in case of emergency, and **subject to the approval**

of the Board of Control, the Secretary of Finance may authorize the National Bank to rediscount commercial paper of not over six months' maturity secured by exports or imports, and may issue against said commercial paper circulating notes * * *.

"SEC. 16. (Increases number of directors to nine.)

"SEC. 17. (Directors to elect president and vice-president from amongst themselves.)

"SEC. 18. The orders and resolutions of the board of directors shall be carried out by a general manager who shall be chief executive of the bank and shall be paid an annual salary to be fixed by the board of directors, **with the approval of the board of control,** and an assistant general manager who * * * shall be paid a salary to be fixed by the board of directors, **with the approval of the board of control.** The general manager shall be appointed by the board of directors, **with the advice and consent of the board of control,** and may be removed in a like manner."

"SEC. 21. The Secretary of Justice shall be attorney for said National Bank * * *."

"SEC. 22. The Insular Auditor shall be *ex officio* auditor of the National Bank and shall, **with the advice and consent of the board of control,** appoint a representative who shall be chief of the auditing department of the bank. All the other employees of the department shall be appointed by the Insular Auditor who, **with the approval of the board of control,** shall fix the salaries of the same as well as that of his representative, the chief of the department. * * * The representative of the Insural Auditor shall make a quarterly report on the condition of the bank to the Governor General of the Philippine Islands, to the Secretary of Finance, **to the Board of Control,** to the Insular Auditor, and to the board of directors of said bank. * * *."

"SEC. 23. All the other officers and employees of the National Bank shall be appointed and removed by the Board of Directors on recommendation of the general manager. Said officers and employees shall not be subject to the Civil Service Law, and their duties and compensations shall be fixed by the general manager, with the approval of the board of directors: *Provided, further,*

That whenever the president or vice-president, by order of the Board of Directors, shall temporarily or permanently perform duties incumbent upon other officers or employees, they may be granted compensation additional to the bonus fixed by this Act for the president and vice president; **but the resolution of said board shall not take effect until the written approval of the members of the Board of Control has been obtained.** The orders of said board of directors in this respect may be modified or repealed at any time, **provided they are approved in each case by the Board of Control.**

"SEC. 24. The board of directors may require the officers and employees in the bank and its branches, before entering upon the performance of their duties, to furnish a fidelity bond for the benefit of the bank, in the form and amount prescribed by the said board of directors. For this purpose, and for this purpose alone, all officers and employees of whom a bond is required shall be deemed public officers and employees, respectively, and the provisions of the Public Bonding Law, Chapter 15 of the Administrative Code, are hereby made applicable to the same."

"SEC. 38. All profits assigned as dividends to the shares of the Government shall be paid into the Insular Treasury, for the general funds thereof."

"SEC. 44. The National Bank shall at all times keep on hand * * * a sum in lawful money * * * computed as follows:

Twenty-five per cent of the circulating notes outstanding, * * *.

Twenty per cent of the demand deposits outstanding * * *: *Provided, however,* That the Secretary of Finance at the request of the board of directors of the bank, **duly approved by the Board of Control,** whenever in his judgment the general interests of the country require it, shall be authorized to suspend for such period as may be necessary, the requirement of maintaining the proportion of the reserve specified in this Act. * * *."

"SEC. 45. The National Bank is hereby authorized to guarantee * * * bonds issued by duly incorporated companies for the erection of and addition or additions to industrial plants or manufactories principally

used for the manufacture and preparation of the products of the Philippine Islands: Provided, however, That **such guarantee shall only be lawful when approved by the Board of Control.**

Subject to the same approval, the National Bank is hereby authorized to purchase bonds issued by any duly incorporated company engaged in the manufacture or preparation of products in the Philippine Islands. * * *."

Analogous statutes charter the National Petroleum Company (Act No. 2814), the National Development Company (Act No. 2849), the National Cement Company (Act No. 2855), and the National Iron Company (Act No. 2862).

GENERAL CORPORATION LAW

Act No. 1459, the "Corporation Law," approved by the Philippine Commission March 1, 1906.

"SEC. 34. Directors of the corporation may be removed from office by vote of two-thirds of the members entitled to vote, or if the corporation be a stock corporation, by a vote of the stockholders holding or representing two-thirds of the subscribed capital stock entitled to vote: *Provided, however,* That such removal shall take place either at a regular meeting of the corporation or at a special meeting called for the purpose, * * *."

"OFFICER."—DEFINITION OF.

"Any person who, by direct provision of law, by popular election or appointment by competent authority, shall take part in the performance of duties in the public service shall be deemed a public officer."

Art. 401, Penal Code of the Philippine Islands.

" 'Officer,' as distinguished from 'clerk' or 'employee,' refers to those officials whose duties, not being of a clerical or manual nature, may be considered to involve the

exercise of discretion in the performance of the functions of government, whether such duties are precisely defined by law or not.

'Officer,' when used with reference to a person having authority to do a particular act or perform a particular function in the exercise of governmental power, shall include any government employee, agent or body having authority to do the act or exercise the function in question."

SEC. 2, Philippine Revised Administrative Code of 1917 (Act No. 2711), Pars. 10 and 11 (pp. 6–7).

UNITED STATES.

"Spooner Amendment." Act of March 2, 1901 (ch. 803; 31 Stat. 895, 910).

"All military, civil and judicial powers necessary to govern the Philippine Islands acquired from Spain by the treaties concluded at Paris on the tenth day of December, eighteen hundred and ninety-eight, and at Washington on the seventh day of November, nineteen hundred, shall, until otherwise provided by Congress, be vested in such person and persons and shall be exercised in such manner as the President of the United States shall direct, for the establishment of civil government and for maintaining and protecting the inhabitants of said Islands in the free enjoyment of their liberty, property and religion."

Executive order of the President organizing civil government, June 21, 1901 (Appendix "A", *infra*, p. 35).

"On and after the fourth day of July, nineteen hundred and one, and until it shall be otherwise ordered, the President of the Philippine Commission will exercise the executive authority in all civil affairs in the government of the Philippine Islands heretofore exercised in such affairs by the Military Governor of the Philippines, and to that end the Hon. William H. Taft, President of the said Commission, is hereby appointed Civil Governor of the Philippine Islands. * * *

"The power to appoint civil officers, heretofore vested in the Philippine Commission, or in the Military Governor, will be exercised by the Civil Governor, with the advice and consent of the Commission."

Act of July 1, 1902, "An Act Temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes" (Sec. 1, ch. 1369, 32 Stat. 691).

> "Be it enacted * * * That the action of the President of the United States in creating the Philippine Commission and authorizing said Commission to exercise the powers of government to the extent and in the manner and form and subject to the regulation and control set forth in the instructions of the President to the Philippine Commission, dated April 7, 1900, and in creating the offices of Civil Governor and Vice Governor of the Philippine Islands, and authorizing said Civil Governor and Vice Governor to exercise the powers of government to the extent and in the manner and form set forth in the Executive Order dated June twenty-first, nineteen hundred and one, * * * is hereby approved, ratified and confirmed, and until otherwise provided by law the said Islands shall continue to be governed as thereby and herein provided, * * *."

Act of February 6, 1905, amending the Act of July 1, 1902 (Sec. 8, ch. 453; 33 Stat. 689, 692).

> "Sec. 8. That the Civil Governor of the Philippine Islands shall hereafter be known as the Governor General of the Philippine Islands."

Organic Act, "Jones Law," approved August 29, 1916 (ch. 416; 39 Stat. 545, *et seq.*).

> "SEC. 21. That the supreme executive power shall be vested in an executive officer, whose official title shall be 'The Governor General of the Philippine Islands', * * *. He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor General, or such as he is authorized by this Act to appoint, or whom he may hereafter be authorized by law to appoint: * * * He shall have general supervision and control of all of the departments and bureaus of the Government of the Philippine Islands so far as is not inconsistent with the provisions of this Act, * * *. He shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution

of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, * * *."

"SEC. 22. That, except as provided otherwise in this Act, the executive departments of the Philippine Government shall continue as now authorized by law until otherwise provided by the Philippine Legislature. * * * The Philippine Legislature * * * shall provide for the appointment and removal of the heads of the executive departments by the Governor General: *Provided*, That all executive functions of the Government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General * * *."

"SEC. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act."

"SEC. 12. That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the Senate and the other the House of Representatives, and the two houses shall be designated 'The Philippine Legislature': * * *."

"SEC. 18. That * * *. Both houses shall convene at the capital * * * and organize by the election of a Speaker or a presiding officer, a clerk, and a sergeant at arms for each house, and such other officers and assistants as may be required. * * *."

"No Senator or Representative shall, during the time for which he may have been elected, be eligible to any office the election to which is vested in the Legislature, nor shall be appointed to any office of trust or profit which shall have been created or the emoluments of which shall have been increased during such term."

"SEC. 19. That * * *.

"All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same. * * *."

"SEC. 20. That at the first meeting of the Philippine Legislature created by this Act and triennially thereafter there shall be chosen by the Legislature two Resident Commissioners to the United States, * * *."

"SEC. 26. That the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law. * * *."

GOVERNOR GENERAL'S EXECUTIVE ORDER

Executive Order No. 37, Philippine Official Gazette, Vol. XXIV, No. 135, November 11, 1926, p. 2419.

"Office of the Governor General of
the Philippine Islands.
Manila, November 9, 1926.

"Whereas it is held in an opinion of the Judge Advocate General of the United States Army, confirmed by an opinion of the Attorney General of the United States, received at the office of the Executive, November seventh, nineteen hundred and twenty-six, that the provisions of the statutes passed by the Philippine Legislature creating a 'Board of Control' or 'Committee' and enumerating the duties and powers thereof, with respect to certain corporations in which the Insular Government is the owner of stock, are nullities; that the remaining portions of said statutes are valid; that the duties imposed by said statutes upon said Board or Committee are executive in their nature, and subject to the provisions of the Organic Act relating to the executive functions; that said executive duties and powers may be performed as in other cases not specifically provided for by law.

"Now, therefore, acting under authority of said opinions, the duties and powers heretofore exercised by said 'Board of Control' or 'Committee' shall, from and after this date, be exercised solely by the Governor-General pursuant to the executive power vested in him by the Organic Act."

"LEONARD WOOD,
Governor-General."

STATEMENT OF THE CASES.

Coal Company. Act No. 2705 of the Philippine Legislature, March 10, 1917, chartered the National Coal Company to develop the coal deposits of the Philippine Islands, fixing its capital stock at 3,000,000 pesos, directing the Governor General to subscribe for 51% of the stock on behalf of the Philippine Government, and appropriating 1,530,000 pesos for that purpose. It was further provided (*supra*, p. 3):

> "SEC. 4. * * *. The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor General, the President of the Senate, and the Speaker of the House of Representatives."

Afterwards, March 5, 1919, by Act No. 2822 (*supra*, p. 3) the charter was amended, *inter alia*, by directing the Governor General to subscribe on behalf of the Government for "*at least* fifty-one per centum of the capital stock" (instead of for exactly 51% as originally provided) and appropriating "such sum as may be necessary" to pay for the Government stock. The Government has in fact acquired and held on December 6, 1926, 29,809 shares out of the total of 30,000 shares then outstanding,—that is to say, all but 191 shares of the issued stock.

National Bank. By Act No. 2612, February 4, 1916 (*supra*, p. 4) the Philippine National Bank was chartered with an authorized capital of 200,000 shares (20,000,000 pesos) of which the Government was to purchase 101,000 shares to be paid for partly out of general funds in the Insular Treasury, partly from the public insurance fund, the public works bonds sinking fund, and the friar lands bonds sinking fund; and partly by the transfer of the assets of the "Agricultural Bank" (Secs. 3, 4, 5 and 6, Act 2612). The voting power of the Government stock was placed in the hands of the Governor General (*ib.* Sec. 5, *supra*, p. 4); and there was also placed in his hands the direct appointment, "by and with the consent of the Upper House of the Philippine Legislature," and the removal with like consent, of the president and vice president of the Bank; and the bank president was to be "chief executive

thereof and chairman of the board at the same time"; the other five directors to be elected by the stockholders in accordance with the general corporation law (*ib.* Secs. 20 and 21, *supra*, pp. 4–5). Afterwards, February 20, 1918, by Act No. 2747 (*supra*, p. 5), the bank charter was amended, *inter alia*, by depriving the Governor General of the voting power of the Government owned stock, and providing that it

> "shall be vested exclusively in a committee consisting of the Governor General, the President of the Senate and the Speaker of the House of Representatives" (*ib.* Secs. 4 and 5, *supra*, p. 5).

Later on, the charter was again amended, January 30, 1921, by Act No. 2938 (*supra*, pp. 5–9), providing *inter alia*, for the increase of the capital to 50,000,000 pesos by a new "second" issue of 300,000 shares; that the Government should purchase all the remaining shares of the first issue, and not less than 153,000 shares of the second issue; and that:

> "SEC. 8. At no time shall shares be sold to the public, if, as a result thereof, the part of the capital stock held by private investors will equal or exceed the part owned by the Government of the Philippine Islands";

appropriating the necessary funds for the purchase of the stock out of general funds of the Insular Treasury; and further providing that (*ib.* Sec. 4, *supra*, p. 6):

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control', composed of the Governor General, the President of the Senate, and the Speaker of the House of Representatives."

The appointment of the president and vice president of the bank was taken from the Governor General, by the provision that they should be elected by the directors from amongst themselves (*ib.* Sec. 17); and the president was no longer to be the bank's chief executive, it being provided that (*supra*, p. 7):

> "SEC. 18. The orders and resolutions of the board of directors shall be carried out by a *general manager who*

> *shall be chief executive of the bank* and shall be paid an annual salary to be fixed by the board of directors, *with the approval of the Board of Control*, and an assistant general manager who * * * shall be paid a salary to be fixed by the board of directors, *with the approval of the Board of Control.* The general manager shall be appointed by the board of directors, *with the advice and consent of the Board of Control*, and may be removed in like manner." (*italics ours*)

Further, that the chief of the auditing department of the bank should be appointed by the Insular Auditor "with the advice and consent of the Board of Control," and that all other employees of the auditing department of the bank should also be appointed by the Insular Auditor, and that the salaries both of the chief of the auditing department and that of the subordinates of that department should be fixed by the Insular Auditor likewise "with the approval of the Board of Control" (*ib.* Sec. 22, *supra*, p. 7).

The "Board of Control" was also given further important administrative duties in the management of the bank (*ib.* Secs. 10, 14, 23, 24, 45, *supra*, pp. 6–9); so that it was not to be simply a "committee" to vote the Government owned stock in the bank; but was to be really, as its name indicated, a "Board of Control" of the bank.

The Government in fact acquired practically all of the bank's issued capital stock, so that on January 17, 1927, there were registered in its name 97,332 shares out of the total of 100,000 shares then outstanding (Case 573, R. 9–10), and but 2,668 shares were then registered in the names of private persons.

Since the formation of the Coal Company in 1917, and since the first amendment to the charter of the Bank by Act No. 2747, *supra*, in 1918, the voting power of the Government owned stock in the Coal Company and in the Bank, respectively, had been exercised by the "Committee" of three composed of the Governor General, the President of the Senate, and the Speaker of the House of Representatives, in accordance with the provisions of those acts (and, as to the Bank, since the second amendatory act No. 2938 of January 30, 1921, by the same three officials acting under the title of "Board of Control").

But on November 9, 1926, Governor General Wood promulgated his "Executive Order No. 37" (*supra*, p. 13), reciting the opinion of The Judge Advocate General of the Army (Appendix C, *infra*, pp. 43–53), "confirmed by an opinion of the Attorney General of the United States" (Appendix B, *infra*, pp. 36–42), and thereupon proclaiming that:

> "acting under authority of said opinions, the duties and powers heretofore exercised by said 'Board of Control' or 'Committee' shall, from and after this date, be exercised solely by the Governor General pursuant to the executive power vested in him by the Organic Act."

Special meetings of the stockholders of the Coal Company and of the Bank were called for the purpose of electing new directors. That of the Coal Company met December 6, 1926 (Case 564, "Exhibit C" to original "complaint", R. 31 *et seq.*). The Governor General attempted to vote the Government stock in favor of certain candidates named by him, but the chairman of the meeting refused to accept the Governor General's ballot, and, holding himself bound by the provisions of Act No. 2705, as "the corporate charter to which the National Coal Company owes its very existence" (Case 564, R. 41–42), ruled that he must accept the ballot tendered by the Honorable Manuel L. Quezon, President of the Senate, and the Honorable Manuel Roxas, Speaker of the House of Representatives, in their capacity as representing the "Committee" (they being the majority thereof and having held a formal meeting of the "Committee" half an hour before the stockholders' meeting, which meeting the Governor General had declined to attend; Case 564, "Exhibit B" to "Complaint," R. 22–31). The ballot, so cast by the majority of the Committee over the protest of the Governor General, elected among others the three petitioners here in Case No. 564, Milton E. Springer, Dalmacio Costas and Anselmo Hilario, as three of the directors of the Coal Company. (The other two candidates for whom the committee ballot was cast were also named on the Governor General's ballot; and were, therefore, unquestionably elected, whichever ballot should have been received).

The special meeting of the Bank's stockholders met January 17, 1927, pursuant to a call ordered by the board of directors December 28, 1926, upon the request of the Governor General,

> "purporting to have been made by him on behalf of the Government of the Philippine Islands as the owner of 97,332 shares of the stock of this corporation and by five other stockholders holding nine shares."

Claiming, as the majority of the Board of Control, to control the voting of the Government stock and the right to say whether or not the special stockholders' meeting should be called, as at the request of the Government as majority stockholder, the President of the Senate and the Speaker of the House, majority members of the Board of Control, declined to recognize the validity of the special meeting, and did not attend it. In their absence the president of the bank, presiding as chairman, ruled that no quorum was present; since

> "Section 4 of the Act of 2938, which constitutes the corporate charter of this bank prescribes that the voting power of all the stock of this bank owned and controlled by the Government"

should be vested exclusively in the Board of Control, and that the bank's By-Laws, acted upon by the stockholders for several years, were in accordance with that statute. Accordingly, he declared the meeting adjourned for lack of a quorum (Case 573, R. 18–27). Thereupon the stockholders present, refusing to acquiesce in that ruling, organized themselves by the election of an acting chairman of the meeting and a secretary *pro tempore*, and proceeded with the meeting, there being present or represented the 97,332 shares of Government owned stock represented by the Governor General, and 81 other shares represented by the owners in person,—a total of 97,413 shares, out of the total 100,000 shares of stock outstanding (Case 573, R. 100). The meeting proceeded, by unanimous vote of the 97,413 shares of stock, to remove the petitioners here, Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, as directors of the bank, and to elect others in their places, and also to elect a fourth director to fill an existing vacancy (Case 573, R. 95–105).

Afterwards, in the case of each corporation, the directors claiming to have been elected by the ballots of the Governor General representing the Government owned stock at the respective stockholders' meetings, demanded recognition as directors of the Coal Company and of the Bank, respectively; which was refused in each instance by the president and the administrative authorities of the Coal Company and of the Bank. Thereupon these petitions for *quo warranto* were filed under the provisions of Section 197 of the Insular Code of Civil Procedure.

The actions were brought as original actions in the Insular Supreme Court under the authority of Section 204 of the Insular Code of Civil Procedure, praying in the Coal Company case for the ousting of the defendants (petitioners here) Milton E. Springer, Dalmacio Costas, and Anselmo Hilario, who had been declared elected directors at the special stockholders' meeting upon the ballot of the majority members of the "Committee" (President of the Senate and Speaker of the House) in opposition to the ballot for other candidates presented by the Governor General (Case 564, R. 2–14); and in the Bank case for the ousting as directors of the defendants (petitioners here), Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, who had been removed at the special stockholders' meeting (after its attempted adjournment by the president of the bank and its reconvening by the stockholders present, as above stated) by the Governor General's ballot of the Government owned stock, and for the induction into office in their stead as directors of the bank of the persons elected at that stockholders' meeting by the ballot of the Governor General and the other stockholders then present, viz., Leon M. Heras, Manual Yriarte, John Gordon and A. Gideon (Case 573, R. 1–17).

The Insular Supreme Court in each case sustained the contention of the Governor General, and judgments were entered in accordance with the prayers of the compaints (Case 564, R. 212–213; Case 573, R. 270).

POSITION OF THE INSULAR GOVERNMENT.

In view of the importance to the people of the Philippine Islands of the questions here involved, it is believed that respondent ought not actively to contend against their review by this court.

But, in order that the court may be fully advised before determining whether to exercise its extraordinary jurisdiction by certiorari, the following is submitted:

The only substantial "reasons for the allowance of the writ" urged by the petitioners are:

(1) Their claim that an important Federal question of the construction of the Organic Act is involved; and

(2) That the Insular Supreme Court failed to follow or give force or effect to applicable decisions of this court (Reasons "1", "2", "3"; p. 5, Petition, Case No. 564; pp. 11–12, Petition, Case No. 573).

The other "reasons" assigned ("4" and "5"; pp. 5–6, Petition, Case No. 564; p. 12, Petition, Case No. 573) merely state that the decision below was by a divided court on a question which should be finally adjudged by this court, and that a full consideration by this court "will tend to prevent costly and undesirable litigation, and promote justice to all concerned."

Respondent submits, to the contrary, that:

(1) The Insular Supreme Court did not fail to follow or give force or effect to any applicable rulings of this court. Its judgments follow the applicable decisions of this court.

(2) No substantial Federal question is presented which is not already foreclosed by the rulings of this court.

Therefore, important as these cases are to the Philippine Government, no reason appears for the exercise of the extraordinary jurisdiction of this court to review them by certiorari. A full review would necessarily result in affirmance of the judgments below, and would only delay the final settlement of the questions at issue.

ARGUMENT

POINT I.

Membership in the committee in question ("Committee" for the Coal Company; "Board of Control" for the Bank) is a "civil office".

A.—IT IS NOT LACKING IN THE ESSENTIAL ELEMENTS OF SUCH OFFICE, VIZ., "a public station, permanent in character, created by law, whose incidents and duties were prescribed by law" (Opinion of the Court Below, Case No. 564, R. 98–99).

Metcalf & Eddy v. *Mitchell*, 269 U. S. 514, 520 (STONE J.).
United States v. *Hartwell*, 6 Wall. 385, 393 (SWAYNE, J.).
United States, v. *Maurice*, 2 Brock. 96; Fed. Cas. No. 15747 (MARSHALL, J.).
State v. *Stanley*, 66 No. Car. 60, 63–68; 8 Am. Rep. 488, 489–493.
Howerton v. *Tate*, 68 No. Car. 546, 548.

B.—IT IS LIKEWISE AN "OFFICE" WITHIN THE STATUTORY DEFINITIONS OF THE PHILIPPINE CODES:

"Any person who, by direct provision of law, by popular election or appointment by competent authority, shall take part in the performance of duties in the public service shall be deemed a public officer."

Art. 401, Penal Code of the Philippine Islands. (*supra*, *p.* 9.)

"'Officer', * * *, refers to those officials whose duties, * * * may be considered to involve the exercise of discretion in the performance of the functions of government, whether such duties are precisely defined by law or not.

'Officer', * * * shall include any government employee, agent or body having authority to do the act or exercise the function in question."

SEC. 2, Philippine Revised Administrative Code of 1917 (Act No. 2711), Pars. 10 and 11 (pp. 6–7). (*supra*, pp. 9–10.)

POINT II.

Therefore, appointment to such "Committee" or "Board of Control" must be by the Governor General; since

1. APPOINTMENT TO CIVIL OFFICE IS AN EXECUTIVE FUNCTION.

Myers v. *United States*, 272 U. S. 52, 115–118;

> "The vesting of the executive power in the President was essentially a grant of the power to execute the laws. * * * As he is charged specifically to take care that they be faithfully executed, the reasonable implication, even in the absence of express words, was that as part of his executive power he should select those who were to act for him under his direction in the execution of the laws. * * * It was urged that the natural meaning of the term 'executive power' granted the President included the appointment and removal of executive subordinates. If such appointments and removals were not an exercise of the executive power, what were they? They certainly were not the exercise of legislative or judicial power in government as usually understood.
>
> "It is quite true that, in State and colonial governments at the time of the Constitutional Convention, power to make appointments and removals had sometimes been lodged in the legislatures or in the courts, but such a disposition of it was really vesting a part of the executive power in another branch of the Government."
>
> *Myers* v. *United States, supra*, 272 U. S. 52, 117–118 (TAFT, CH. J.).

And, under the Philippine Organic Act,

> "The supreme executive power shall be vested in * * * 'The Governor General of the Philippine Islands'" (Sec. 21; 39 Stat. 552);

which is a grant of exclusive ececutive power, and is not merely the naming of a department of the Government.

Myers v. *United States, supra*, 272 U. S. 52, 151.

Furthermore, in the Philippine Organic Act, this general grant of supreme executive power to the Governor General is strengthened and made more specific by the additional provisions that:

"He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor General, * * * or he may hereafter be authorized by law to appoint; * * *. He shall have general supervision and control of all of the departments and bureaus of the Government of the Philippine Islands so far as it is not inconsistent with the provisions of this Act, * * *. He shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, * * *." (Sec. 21, *supra;* 39 Stat. 552.)

"The Philippine Legislature * * * shall provide for the appointment and removal of the heads of the executive departments by the Governor General: *Provided,* That all executive functions of the Government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General." (Sec. 22; 39 Stat. 553.)

2. THE ORGANIC ACT, BY POSITIVE DIRECTION, VESTS THE GOVERNOR GENERAL WITH THE POWER OF APPOINTMENT OF ALL CIVIL OFFICERS "BY AND WITH THE CONSENT OF THE PHILIPPINE SENATE," WHOSE APPOINTMENT IS NOT THEREIN OTHERWISE PROVIDED FOR.

"He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor General." (Organic Act, Sec. 21, *supra;* 39 Stat. 552.)

The Executive Order of the President, June 21, 1901 (*supra,* p. 10), issued pursuant to the authority given the President by the "Spooner Amendment" of March 2, 1901 (31 Stat. 910; *supra,* p. 10), provided:

"*The power to appoint civil officers* heretofore vested in the Philippine Commission, or in the Military Governor, *will be exercised by the Civil Governor* with the advice and consent of the Commission." (*italics ours.*)

That power to appoint "civil officers" was ratified and continued in effect by Section 1 of the Act of July 1, 1902 (39 Stat. 691; *supra,* p. 11), providing that

"the action of the President of the United States * * * in creating the offices of Civil Governor and

> Vice Governor of the Philippine Islands and authorizing said Civil Governor and Vice Governor to exercise the powers of government to the extent and in the manner and form set forth in the Executive Order dated June 21, 1901 * * * is hereby approved, ratified, and confirmed, and until otherwise provided by law the said Islands shall continue to be governed as thereby and herein provided, * * *."

And was in turn further continued in effect (the title "Civil Governor" having been in the meantime changed to "The Governor General of the Philippine Islands"; Act of Feb. 6, 1905, Sec. 8; 33 Stat. 692) by the provision above quoted from Section 21 of the present Organic Act, "Jones Law" (39 Stat. 552, *supra*), that the Governor General shall, unless therein otherwise provided,

> "appoint * * * such officers as may now be appointed by the Governor General":—

the only change being the insertion of the qualification that such appointments shall be made "by and with the consent of the Philippine Senate."

3. THEREFORE, APPOINTMENTS TO CIVIL OFFICE IN THE PHILIPPINES (NOT OTHERWISE EXPRESSLY PROVIDED FOR IN THE ORGANIC ACT) ARE VESTED SOLELY IN THE GOVERNOR GENERAL AS THE SUPREME EXECUTIVE POWER IN THE ISLANDS; because (1) such appointment is an executive function and part of the supreme executive power granted him by the Organic Act, and (2) such power of appointment is expressly granted to him by the provision of Section 21 of the Organic Act continuing in force the power theretofore exercised by him under the grant originally given by the Presidential Order of June 21, 1901, and continued in effect by the Act of July 1, 1902.

POINT III.

If appointment to such an office ("Committee", "Board of Control") could properly be vested in the Legislature, then neither the President of the Senate nor the Speaker of the House would be eligible thereto.

> "No Senator or Representative shall, during the time for which he may have been elected, be eligible to any office the election to which is vested in the Legislature." (Sec. 18, last paragraph; Organic Act, 39 Stat. 551; *supra*, p. 12).

POINT IV.

But even if membership in the Committee were not, technically, "an office"; but the Committee were to be considered as really a committee of the Legislature, then it may not under the Organic Act be vested with the power to vote the stock of these corporations (nor to perform the other administrative acts attempted to be vested in the "Board of Control" with reference to the Bank); since these are quasi-public corporations, owned practically outright by the Government, administering public funds raised by taxation and invested by the Government in the purchase of their capital stock, as convenient means or agencies for accomplishing public governmental purposes.

Therefore, appointment of their officials,—directors and corporate officers,—is, in effect, the appointment of "civil officers" of the Government; and is a function of the Governor General which could not be exercised by the Legislature itself; and which therefore it cannot delegate to a legislative committee. Its committee cannot do more than could the Legislature itself.

Confer,

State v. *Stanley, supra,* 66 No. Car. 60, 63–68; 8 Am. Rep. 488, 489–493.[1]

Howerton v. *Tate, supra,* 68 No. Car. 546, 548.[1]

A.—THESE ACTS OF THE LEGISLATURE DIRECTING THE PURCHASE BY THE PHILIPPINE GOVERNMENT OF A MAJORITY OF THE STOCK OF THESE CORPORATIONS (PHILIPPINE NATIONAL BANK AND NATIONAL COAL COMPANY) CAN ONLY BE SUSTAINED BECAUSE THEY ARE FOR PUBLIC PURPOSES.

Otherwise the Philippine Government would have no power to invest its public funds raised by taxation in the capital stock of these corporations.

Cooley on Taxation (4th Ed.), Secs. 174 and 175.

B.—SINCE, THEN, THE PHILIPPINE GOVERNMENT HAS CAUSED THESE CORPORATIONS TO BE ORGANIZED FOR PUBLIC PURPOSES, AND, FOR SUCH PUBLIC PURPOSES, HAS INVESTED PUBLIC FUNDS IN THEM, AND CONTROLS THEM THROUGH THE OWNERSHIP OF MORE THAN A MAJORITY OF THE CAPITAL

[1] "On all fours" with the present cases. See foot-note, *infra,* p. 31.

STOCK,—PRACTICALLY ALL OF THE CAPITAL STOCK OF EACH OF THEM, CARRYING ABSOLUTE POWER TO ELECT ALL OF THE DIRECTORS AND THROUGH THEM ALL OF THE OFFICERS AND EMPLOYEES, AND ABSOLUTELY TO DIRECT THE ADMINISTRATION OF THE CORPORATIONS AS COMPLETELY AS THOUGH THEY WERE, DIRECTLY, BUREAUS OF THE GOVERNMENT;—THEY MUST BE TREATED AS PUBLIC AGENCIES,—as convenient means through which the Philippine Government may discharge a portion of its public duties; in the same way that this court sustained the validity of the acts of Congress organizing the original Bank of the United States as a public agency.

McCulloch v. *Maryland*, 4 Wheat. 316, 408–424.

These corporations, being thus chartered for public purposes, financed with public moneys from the Insular Treasury, and wholly controlled by the Government itself, are, really, in effect, public,—or *quasi*-public,—corporations, within the meaning of Chief Justice Marshall's distinction in the Dartmouth College case:

> "The character of civil institutions does not grow out of their incorporation, but out of the manner in which they are formed, and the objects for which they are created. The right to change them is not founded on their being incorporated, but on their being the instruments of government, created for its purposes. The same institutions, created for the same objects, though not incorporated, would be public institutions, and, of course, be controllable by the legislature. The incorporating act neither gives nor prevents this control. Neither, in reason, can the incorporating act change the character of a private eleemosynary institution."
>
> *Dartmouth College* v. *Woodward*, 4 Wheat. 518, 638–639.

The Panama Railroad is none the less a government agency than the Panama Canal; although the former is administered through the means of a government owned corporation, whereas the latter is administered directly by the Government.

IT IS WHOLLY IMMATERIAL THAT, BY ADOPTING THE CORPORATE FORM OF ORGANIZATION FOR THESE AGENCIES, THE GOVERNMENT HAS WAIVED ITS IMMUNITY FROM SUIT, AS TO THEIR CONTRACTS AND TORTS; and, in that respect, has put itself on the same footing as a private citizen in relation to

their dealings with third parties. *That is the principle of the cases cited on pages* 19 to 22 *of Petitioners' brief* in Case No. 564, viz:—*Bank of the United States* v. *Planters' Bank of Georgia*, 9 Wheat. 904, 907–908; *Curran* v. *Arkansas*, 15 How. 304, 308–309; *Marshall* v. *Railroad Co.*, 92 N. C. 322, 327–328; and *National Coal Co.* v. *Collector of International Revenue*, 46 Phil Rep. 583.

> "If the Government were asserting any rights with respect to the conduct of the corporation's affairs, its contracts or its torts, then its rights, duties, and privileges would be no greater than those of any other stockholder. (*Bank of the United States* v. *Planters' Bank*, 9 Wheat. 904, 907). But here * * * *since these dividends constituted 'public money' applicable to public purposes only, the Government in collecting them was acting in its governmental capacity* as much as if it were collecting taxes, such as those with which, no doubt, the stock which produced the dividends was purchased." (*Italics ours.*)
>
> *Chesapeake & Delaware Canal Co.* v. *United States*, 250 U. S. 123, 126.

Paraphrasing the words of this court, italicized above, may we not say that "since the shares of the National Coal Company and of the National Bank owned by the Philippine Government are public property (they were purchased with 'public money applicable to public purposes only'), the Government in voting them, or in administering these corporations through them, is acting 'in its governmental capacity' "; as much as in administering the City of Manila, or in appointing its city officials?

C.—THESE CORPORATIONS, THEN, ARE DISCHARGING A PORTION OF THE DUTIES OF THE GOVERNMENT, and have been endowed with their charters for public purposes. Their officers are, therefore, *pro tanto* discharging public duties; and, necessarily, of an executive nature.

D.—THE POWER OF APPOINTMENT OF THESE OFFICERS OF THOSE CORPORATIONS, so discharging public executive duties,—whether corporate directors, president, vice president, general manager, assistant general manager, chief of the auditing department, or other officers, employees or agents of the Bank, is, therefore, an executive power.

E.—BEING AN EXECUTIVE POWER,—IN EFFECT, A POWER OF APPOINTMENT TO CIVIL OFFICE,—SUCH APPOINTING POWER CAN ONLY BE EXERCISED BY THE EXECUTIVE.

Confer, Point II, *ante*, pp. 22–24, and authorities there cited.

SEE ALSO,

State v. *Stanley*, *supra*, 66 No. Car. 60, 63–68; 8 Am. Rep. 488, 489–493.

Howerton v. *Tate*, *supra*, 68 No. Car. 546, 548.

It is not a legislative power; and, therefore, cannot be exercised by the Legislature.

1. The Legislature of the Philippine Islands possesses legislative power only (except in the few instances otherwise expressly provided by the Organic Act).

> "general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, * * *." (Sec. 8, Organic Act, 39 Stat. 547.)

> "That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature * * * designated 'The Philippine Legislature'; * * *." (*ib.* Sec. 12, 39 Stat. 548.) [1]

The only powers not strictly legislative in character granted to the Legislature are:

(*a*) Each house to appoint its presiding officer, clerk and sergeant at arms, "and such other officers and assistants as may be required" (Sec. 18; 39 Stat. 550);

(*b*) To choose, triennially, two Resident Commissioners to the United States (Sec. 20; 39 Stat. 552); and

(*c*) (The Senate alone) to approve or disapprove the Governor General's appointments of civil officers to be appointed "by and with the consent of the Philippine Senate" (Sec. 21, *supra;* 39 Stat. 552).

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[1] The purpose of Congress to distribute the powers of Government in the Philippines between the three departments, executive, legislative, and judicial, is beyond peradventure. The Organic Act vests "supreme executive power" in the Governor General (Sec. 21); grants "general legislative power" to the Legislature (Secs. 8, 12); and provides that the Insular Supreme Court and the Courts of First Instance shall possess and exercise jurisdiction (the judicial power) as theretofore provided and such additional jurisdiction as shall "hereafter" be prescribed by law (Sec. 26).

With these three exceptions, the powers granted the Legislature are purely legislative in character; that is, the power "to make laws, and to alter and repeal them" (Opinion of the Insular Supreme Court, Case 564, R. 80; quoting *Story, Const. Lim.* (8th Ed.) p. 183).

F.—NEITHER CAN IT BE EXERCISED BY A COMMITTEE OF THE LEGISLATURE, WHICH MAY ONLY EXERCISE SUCH POWERS AS THE LEGISLATURE ITSELF COULD EXERCISE.

Executive duties cannot be given them under the guise of additional duties as members of the Legislature; because such executive duties are not "germane to the" (legislative) "offices already held by them."

> *Shoemaker* v. *United States*, 147 U. S. 282, 301.
> *State* v. *Stanley, supra*, 66 No. Car. 60, 63–68; 8 Am. Rep. 488, 489–493.
> *Howerton* v. *Tate, supra*, 68 No. Car. 546, 548.

> "The General Assembly not only passed an act—that is, made a law—but it made a joint committee of the Senate and the House as its executive agent to carry out the law. *This is a clear and conspicuous instance of an attempt by the General Assembly to confer executive power on a collection of its own members.*" (*Italics ours.*)
> *Stockman* v. *Leddy*, 55 Colo. 24; 129 Pac. 220, 223; Anno. Cas. 1916–B, 1052, 1055.

> "It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers entrusted to governments, whether state or national, are divided into three grand departments, of the executive, the legislative, and the judicial. * * * It is also essential to the successful working of the system, that the persons entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriated to its own department and no other."
>
> *Kilbourn* v. *Thompson*, 103 U. S. 164, 190.

1. It is of but little significance that Congress itself may in a few instances have trespassed on the executive power by itself naming (or authorizing its own officers to name) from its own body members of boards intended to exercise executive powers somewhat analogous to those attempted to be given by the Philippine Legislature to this "Committee" and "Board of Control." (E.g., *Smithsonian Institution*, 9 Stat. 102, 103, Rev. Stats., Title 73; *National Forest Reservation Commission*, 36 Stat., 961, 962; and *Public Buildings Commission*, 40 Stat. 1269; cited on pages 11, 25–26 of Petitioners' Brief in Case 564).

Rather is it significant that the industry of counsel for the petitioners has succeeded in finding so few instances where Congress has thus ventured.

> "In the use of Congressional legislation to support or change a particular construction of the Constitution by acquiescence, its weight for the purpose must depend not only upon the nature of the question, but also upon the attitude of the executive and judicial branches of the Government, as well as upon the number of instances in the execution of the law in which opportunity for objection in the courts or elsewhere is afforded. When instances which actually involve the question are rare, or have not in fact occurred, the weight of the mere presence of acts on the statute book for a considerable time, as showing general acquiescence in the legislative assertion of a questioned power, is minimized."
>
> *Myers* v. *United States*, *supra*, 272 U. S. 52, 170–171.

None of the Acts cited by petitioners have ever, as to this feature, been tested in the Courts.

POINT V.

It follows that, even if the membership of the President of the Senate and the Speaker of the House in the "Committee" and the "Board of Control" were not to be considered as, technically, an "office," yet the enactment of these statutes by the Legislature, so attempting to fill the membership in the "Committee" and "Board of Control" by the designation of its own presiding officers, amounted to an invasion by the legislative branch of the domain of the executive. It was a clear attempt to confer executive power on members of the Legislature.

Confer:

COLORADO.

Stockman v. *Leddy*, 55 Colo. 24; 129 Pac. 220, 223; Anno Cas. 1916–B., 1052, 1055.

INDIANA.

State ex rel Jameson v. *Denny*, 118 Ind. 382; 21 N. E. 252, 254 *et seq.*; 4 L. R. A. 79, 81, 80–83.
State ex rel Holt v. *Denny*, 118 Ind. 449; 21 N. E. 274, 277, *et seq.*

KENTUCKY.

Taylor v. *Commonwealth*, 3 J. J. Marshall (26 Ky.) 401 (ROBERTSON, CH. J.; 1830).
Pratt v. *Breckinridge*, 112 Ky. 1; 65 S. W. 136, 137 *et seq.*
Sibert v. *Garrett*, 197 Ky. 17; 246 S. W. 455, 456 *et seq.*

OHIO.

State v. *Kennon*, 7 Ohio 546, 553 *et seq.*

FLORIDA.

Re Members of Legislature, 49 Fla. 269; 39 Sou. 63, 64.

NORTH CAROLINA.

State of North Carolina v. *Stanley*,[1] *supra*, 66 N. C. 59, 63 *et seq.*, particularly 66–68; 8 Am. Rep. 488, 489–493.
Howerton v. *Tate*, *supra*, 68 N. C., 546, 548.[1]

UTAH.

McCornick v. *Pratt*, 8 Utah 294; 30 Pac. 1091, 1093–1094; 17 L. R. A. 243, 249.

Decisions to the contrary in a few States,—e. g., *Biggs* v. *McBride*, 17 Oregon, 640, cited by Petitioners (Case No. 564, Petitioners' Brief, pp. 51–52), are based upon the theory prevailing in those States that the legislative power includes the power of appointment to office; which is contrary to the Federal law as established by this court in the *Myers* case.

Myers v. *United States*, *supra*, 272 U. S. 52, 106 *et seq.*

[1] "On all fours" with the present cases. Holds invalid a provision of the North Carolina Act of April 6, 1871, "authorizing and empowering the President of the Senate and Speaker of the House of Representatives to appoint proxies and directors on the part of the State in all corporations in which the State has an interest." (p. 60).

POINT VI.

Failure of the Congress to annul invalid portions of these Insular acts does not amount to Congressional ratification.

Nor to amendment thereby of the Organic Act; nor to its obsolescence.

The power reserved to Congress by Section 19 of the Organic Act by the provision that

> "all laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same" (39 Stat. 551; *supra*, p. 12),

is, primarily, a reservation of *legislative power;* not of judicial power.

It is but an express statement of the reserve power which Congress would have had, even without such express statement of it, under its constitutional plenary power to legislate for the territories. It is a reserved power in Congress to annul even perfectly valid acts of its agent, the Insular Legislature.

Upon the *judicial* question whether an Insular statute contravenes a provision of the Organic Act, long continued acquiescence by the Congress may, it is true, have some persuasive weight; but it cannot bind the courts, if clearly erroneous.

There is nothing to the contrary in either of the decisions of this court cited on pages 53 to 56 of Petitioners Brief here in Case No. 564 (*Clinton* v. *Englebrecht*, 13 Wall. 434, 445–446; *Gromer* v. *Standard Dredging Co.*, 224 U. S. 362, 370–371; *Tiaco* v. *Forbes*, 228 U. S. 549, 557–558).

The Organic Act, and other statutes of Congress, cannot be thus amended by indirection or inattention.

Expressions in some judicial opinions, apparently giving broader effect to the failure of Congress to act, must be considered as limited by the facts in those cases. For instance, the language of the Circuit Court of Appeals, First Circuit, in the case of *Fajardo Sugar Company* v. *Holcomb, Auditor*, 16 F. (2d) 92, ANDERSON J., November 23, 1926, quoted and relied upon by petitioner (Petitioner's Brief, Case 564, pp. 56–58) has been limited by the same court in its later opinion, April

11, 1927, also written by MR. JUSTICE ANDERSON, in which that court says:

> "This failure to annul has some, though not controlling, weight. But we are not prepared to adopt the appellants' broad contention that, 'The Legislature of Porto Rico is an agent of Congress' and that therefore the 'Act has now become in effect an act of Congress itself.' This proposition goes too far. Failure to annul is not the full equivalent of adoption. None of the cases cited and relied upon support the appellants' broad contention as to agency. *Tiaco* v. *Forbes*, 228 U. S. 549, 557–558; *Porto Rico* v. *Am. etc. R. Co.*, 254 Fed. 369, 377; *Camunas* v. *P. R. Ry., etc. Co.*, 272 Fed. 924, 931, and cases cited."
>
> *Gallardo, Treasurer of Porto Rico*, v. *Porto Rico Railway Light & Power Co.*, 18 F. (2d) 918, 923; ANDERSON, J., April 11, 1927.

It is believed that the rule, as thus stated by the Circuit Court of Appeals for the First Circuit, conforms to the decisions of this court in the *Englebrecht* and *Tiaco-Forbes* cases (*Clinton* v. *Englebrecht, supra*, 13 Wall. 434, 445–446; *Tiaco* v. *Forbes, supra*, 228 U. S. 549, 557–558).

Compare, also, what was said by this court as above quoted (*ante*, p. 30) in the *Myers* case, as to the interpretative value even of Congressional enactments implying an assertion of doubtful legislative power, when untested in the courts.

Myers v. *United States, supra, 272* U.S. 52, 170-171.

In the present case the Philippine acts here in question, being clearly in violation of the Organic Act enacted by Congress for the government of these islands, are not validated by the failure of Congress actively to annul them.

To hold otherwise would be to say that an act of Congress may be amended or annulled by inattention or indirection;—by its disregard by the Insular Legislature, coupled with the mere failure of Congress to act.

In view of the increase of legislation in the territories and territorial possessions of the United States and in view also of the vast number of bills that are presented to Congress for its consideration, which are increasing year by year, and the recent tremendous increase generally in the business of Congress itself, the reason for the judiciary to give weight to such

Congressional inaction is gradually decreasing day by day. It is, therefore, not surprising that petitioners have been unable to cite any case where this court has held valid an act of a territorial or insular legislature in conflict with an Organic Act, because of the failure of Congress to annul such act; and no such case can be found.

The establishment of the rule in this respect contended for by the petitioners would, under present conditions, amount to permitting territorial legislatures and the legislatures of our insular possessions to amend acts of Congress, merely because Congress by reason of its vast duties has not had time or opportunity to give consideration to such territorial or insular legislation.

CONCLUSION.

It is respectfully submitted that the judgments of the Insular Supreme Court are in harmony with the controlling decisions of this court hereinbefore cited, and necessarily resulted from the principles of those decisions; that no new Federal question of substance is here presented not already decided by this court; and that, therefore, important as these cases are, administratively, to the people and government of the Philippine Islands, no occasion is here presented for the exercise of the extraordinary jurisdiction of this court to review them by certiorari.

Respectfully submitted.

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APPENDICES

APPENDIX A.—Executive Order, June 21, 1901, Organizing Civil Government.

APPENDIX B.—The Attorney General's Opinion.

APPENDIX C.—The Judge Advocate General's Opinion.

APPENDIX A.

EXECUTIVE ORDER ORGANIZING CIVIL GOVERNMENT

WAR DEPARTMENT,
Washington, June 21, 1901.

On and after the fourth day of July, nineteen hundred and one, until it shall be otherwise ordered, the President of the Philippine Commission will exercise the executive authority in all civil affairs in the government of the Philippine Islands heretofore exercised in such affairs by the Military Governor of the Philippines, and to that end the Hon. William H. Taft, President of the said Commission, is hereby appointed Civil Governor of the Philippine Islands. Such executive authority will be exercised under, and in conformity to, the instructions to the Philippine Commissioners, dated April seventh, nineteen hundred, and subject to the approval and control of the Secretary of War of the United States. The municipal and provincial civil governments, which have been, or shall hereafter be, established in said islands, and all persons performing duties appertaining to the offices of civil government in said islands, will, in respect of such duties, report to the said Civil Governor.

The power to appoint civil officers, heretofore vested in the Philippine Commission, or in the Military Governor, will be exercised by the Civil Governor, with the advice and consent of the Commission.

The Military Governor of the Philippines is hereby relieved from the performance, on and after the fourth day of July, of the civil duties hereinbefore described, but his authority will continue to be exercised as heretofore, in those districts in which insurrection against the authority of the United States continues to exist, or in which public order is not sufficiently restored to enable provincial civil governments to be established under the instructions to the Commission dated April seventh, nineteen hundred.

By the President:

ELIHU ROOT,
Secretary of War.

APPENDIX B.

ATTORNEY GENERAL'S OPINION.

DEPARTMENT OF JUSTICE
WASHINGTON

September 22, 1926.

Sir:

I have the honor to acknowledge receipt of your letter of April 20, 1926, requesting my opinion of the validity of the Board of Control created by the Philippine Legislature.

On February 4, 1916, by Act No. 2612, the Philippine Legislature created the Philippine National Bank, of which the Philippine Government was to purchase a majority of the shares of stock, appropriated public moneys for that purpose, and authorized the sale of the remaining stock to the public at par. By this Act the Governor-General was vested with exclusive power to vote the stock purchased by the Philippine Government; he was authorized to appoint, with the consent of the upper house of the legislature, the president and the vice-president of the bank, who should constitute two of the seven directors, and he was authorized to perform various other duties and functions in connection with the business of the bank.

On February 20, 1918, by Act No. 2747, the Philippine Legislature amended the Act of 1916, providing that—

"The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

The authority of the Governor-General to appoint a president and a vice-president of the bank was not affected by this Act.

On January 30, 1921, the Act was again amended by Act No. 2938, which provided that—

"The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate and the Speaker of the House of Representatives."

By amending Section 16 of the earlier Act, the Act of 1921 increased the number of directors from seven to nine, all to be elected by the stockholders; and by amending Section 17 it authorized the board of directors to elect from among their number a president and a vice-president and to appoint a general manager, who should be the chief executive of the bank. The fixing of the

salary of the general manager could be done by the directors only with the approval of the Board of Control, and his appointment and removal by the board of directors could be effected only with the advice and consent of the Board of Control.

Section 22 of the Act as amended provided that—

"The Insular Auditor shall be ex-officio auditor of the National Bank and shall, with the advice and consent of the Board of Control, appoint a representative who shall be chief of the auditing department of the Bank. All the other employees of the department shall be appointed by the Insular Auditor who, with the approval of the Board of Control, shall fix the salaries of the same as well as that of his representative, the chief of the department * * *."

By the same amending Act the approval of the Board of Control is prerequisite to the rediscounting of commercial paper by the bank (Sec. 14), the guaranteeing by the bank of the principal and interest of the bonds of industrial companies (Sec. 45) or the purchasing of such bonds. (Sec. 45.)

The Legislature has also created a National Coal Company (Act No. 2705); a National Petroleum Company (Act No. 2814); a National Development Company (Act No. 2849); a National Cement Company (Act No. 2855), and a National Iron Company (Act No. 2862). The aggregate authorized capital stock of these companies is 54,500,000 pesos. As to each of these companies the legislature directed that a majority of the shares of stock should be purchased by the Governor-General on behalf of the Philippine Government, and appropriated public funds for this purpose. As to each of these companies the Act authorizing its creation provided that the power to vote the shares held by the Philippine Government should be vested exclusively in a committee consisting of the Governor-General, the President of the Senate and the Speaker of the House of Representatives.

The validity of the legislation involved depends upon the construction which is to be given to the Act of Congress establishing the present form of government in the Philippine Islands, the Act of August 29, 1916, c. 416, 39 Stat. 545, otherwise known as the Philippine Organic Act.

The pertinent provisions of that Act are as follows:—

"SEC. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act."

"SEC. 18. * * * No senator or representative shall, during the time for which he may have been elected, be eligible to any

office the election to which is vested in the legislature, nor shall be appointed to any office of trust or profit which shall have been created or the emoluments of which shall have been increased during such term."

"SEC. 21. That the supreme executive power shall be vested in an executive officer, whose official title shall be 'The Governor-General of the Philippine Islands.' * * * He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor-General, or such as he is authorized by this Act to appoint, or whom he may hereafter be authorized by law to appoint, but appointments made while the senate is not in session shall be effective either until disapproval or until the next adjournment of the senate. He shall have general supervision and control of all of the departments and bureaus of the government in the Philippine Islands as far as is not inconsistent with the provisions of this Act * * *."

"SEC. 22. * * * all executive functions of the government must be directly under the Governor-General or within one of the executive departments under the supervision and control of the Governor-General."

Section 24 provides for the appointment of an auditor and a deputy auditor by the President of the United States, outlines the duties of these officers, and declares that "The office of the auditor shall be under the general supervision of the Governor-General and shall consist of the auditor and deputy auditor and such necessary assistants as may be prescribed by law."

Section 18, quoted above, clearly provides that the legislature may not elect its own members to offices outside of the legislature itself. When Congress enacted this provision it was evidently thinking primarily of the two Resident Commissioners to the United States, but the section under consideration is not restricted to those officers. The legislature may not elect one of its own members to a position, *ex-officio* or otherwise, if that position is an office and if the duties of that office are not strictly legislative in character or essential in order to enable the legislature itself to exercise its legitimate functions. Obviously membership in the Board of Control is an office, for it is a public station, permanent in character, created by law, the incidents and duties of which are prescribed by law. *Metcalf & Eddy* v. *Mitchell*, 269 U. S. 514, 520. The position is a public office. It comes within Article 401 of the Penal Code of the Philippines, which declares that "For the purpose of applying the provisions of this and the

preceding titles of this book, any person who, by direct provision of law, by popular election, or appointment by competent authority, shall take part in the performance of duties in the public service shall be deemed a public officer." The position is analogous to that involved in *Clark* v. *Stanley*, 66 N. C. 59, where the legislature authorized the president of the senate and the speaker of the house of representatives to appoint proxies and directors for the State in all corporations in which the State was a stockholder. In holding the legislation unconstitutional, the court said that "A public office is an agency for the State, and the person whose duty it is to perform this agency is a public officer." See also *In re Members of the Legislature*, 49 Fla. 269, 39 So. 63; *People* v. *Sanderson*, 30 Cal. 160; and the opinion which Attorney General Stone rendered to the Secretary of War on April 30, 1924 (34 Ops. A. G. 287), concerning the Philippine Independence Commission. There is nothing in the nature of the duties to be performed by the Board of Control which by necessary implication takes such an office out of the express terms of the Philippine Organic Act. And it cannot be said that the office is simply honorary and for that reason the fundamental law of the Islands should not be so construed as to apply to it. Two members of the legislature constitute a majority of a board which controls active business corporations capitalized at over fifty-four million pesos. Clearly Section 18 of the Act of Congress applies to such offices. Even if the legislature may select members of the Board of Control, it may not place any senator or representative upon that board.

The question whether the legislature possesses any power whatever to select members of the board must be solved by a consideration of other provisions of the Philippine Organic Act.

That Act is unquestionably modeled on the Constitution of the United States in distributing governmental powers among legislative, executive and judicial authorities and in impliedly prohibiting one department of government to exercise powers which have been entrusted only to another department. It is true that under both fundamental laws the distribution of powers is not strictly logical; that, for example, the President and the Governor-General exercise power which is legislative in its nature when they veto legislation, and that the Senate of the United States and the Philippine Senate exercise power of an administrative nature when they consider appointments to office. But such exceptions, which are expressly recognized in the Constitution of the United States and in the Philippine Organic Act, do not lessen the positiveness of the rule in unexcepted cases. It is a funda-

mental principle that in the absence of an express exception to the general rule governmental powers cannot be considered as overlapping. The legislature may not exercise any of the powers which have been granted to the executive department of government.

As the Supreme Court of the United States said in *Kilbourn* v. *Thompson*, 103 U. S. 168, 190, 191—

> "It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to government, whether State or national, are divided into the three grand departments, the executive, the legislative and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other. To these general propositions there are in the Constitution of the United States some important exceptions. * * *
>
> "In the main, however, that instrument, the model on which are constructed the fundamental law of the States, has blocked out with singular precision, and in bold lines, in its three primary articles, the allotment of power to the executive, the legislative, and the judicial departments of the government. It also remains true, as a general rule, that the powers confided by the Constitution to one of these departments cannot be exercised by another."

This point was also discussed at length by James Madison in the First Congress. Annals of Congress, I, 463.

The Philippine Organic Act, in Section 22, provides that "all executive functions of the government must be directly under the Governor-General or within one of the executive departments under the supervision and control of the Governor-General." Madison, in the speech just cited, declared "I conceive that if any power whatsoever is in its nature executive, it is the power of

appointing, overseeing and controlling those who execute the laws." Madison unquestionably understood correctly the Constitution which he did so much in framing and which served as a model for the fundamental law of the Philippine Islands. The power of appointment of public officials must rest with the executive department of the United States and with the executive department of the Philippine Government.

Apparently there has been no decision directly upon this point by the Supreme Court of the United States. In *United States* v. *Ferreira*, 13 How. 40, 51, however, that Court declared emphatically that Congress cannot by law designate the persons to fill the offices which it creates. That point was not necessarily involved in the case then before the Court, but the Court left no possible doubt as to its position. As expressed by the Supreme Court of North Carolina in *People* v. *Bledsoe*, 68 N. C. 457, 460, "Creating an office is an act of legislation. Filling an office is an executive act." The rule stated by the Supreme Court of the United States in *United States* v. *Ferreira* would equally apply to acts of the Philippine Legislature designating its own officials to fill positions upon the Board of Control.

As you have not requested my advice concerning the validity of the provisions of Act No. 2938 relating to the Insular Auditor, I express no opinion thereon. In *Shoemaker* v. *United States*, 147 U. S. 282, 300, 301, it was held that Congress could impose upon officers of the United States additional duties germane to the offices already held by them without calling for fresh appointments by the appropriate executive official. Whether this rule would apply to the Insular Auditor who is under the general supervision of the Governor-General but has not been expressly placed under his "control," it is not necessary to decide at the present time.

The acts of the Philippine Legislature which have been considered are clearly invalid in so far as they provide that the President of the Senate and the Speaker of the House of Representatives shall be members of the board or committee of control. The statutes make them not only members of the board, but a majority of it, having power to dictate its decisions. Their membership is an inseparable feature of the board. For this reason, as they cannot serve upon the board, the provisions of the statutes which create that board and enumerate its powers must be treated as nullities.

Of course, the remaining portions of the statutes are not affected by the invalidity of the portions under consideration. The present directors of those corporations are *de facto* directors

until others are chosen. The legislature may possibly create another board of control by a statute which recognizes that the duties of such a board are executive, subject to the provisions of the Organic Act relating to executive functions. But unless and until the legislature creates such an executive board, any duties of an executive nature which arise may be performed as in other cases not specifically provided for by law. The supreme executive power is vested in the Governor-General.

Respectfully,

(Sgd.) WILLIAM J. DONOVAN,
Acting Attorney General.

The Honorable,
The Secretary of War.

APPENDIX C.

WAR DEPARTMENT
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON

Civil Affairs
Stallings—lmc

APRIL 16TH, 1926.

Memorandum for the Chief of the Bureau of Insular Affairs.

Subject: Validity of Boards of Control Appointed by the Philippine Legislature.

1. My opinion is desired as to the legality of a "Board of Control," or "Committee," composed of the Governor-General, President of the Senate, and Speaker of the House of Representatives, appointed by the Philippine Legislature and vested with the exclusive right to vote the stock owned by the Philippine Government in certain corporations created by the Philippine Legislature.

2. Act No. 2612 passed by the Philippine Legislature on Februray 4, 1916, created a corporation known as the Philippine National Bank with an authorized capital of twenty million pesos, divided into two hundred thousand shares of a par value of one hundred pesos each (Sec. 3) of which shares the Philippine Government was to purchase one hundred and one thousand (Sec. 4), made appropriation of public money to pay for same (Sec. 5), and provided that the remaining stock should be offered to the public at par. The Governor-General was vested exclusively with the voting power of said stock (Sec. 5). He was authorized by and with the consent of the Upper House of the Philippine Legislature to appoint the president and vice-president of the corporation (Sec. 21) and to perform various other duties and functions in connection with the business of the bank, not important here.

On February 20, 1918, the Philippine Legislature passed Act No. 2747, amending Act No. 2612, and provided in Section 4 thereof:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine slands shall be vested 'exclusively in a committee consisting of the Governor-General, the President of the Senate and the Speaker of the House of Representatives.'"

This section took from the Governor-General the exclusive voting power theretofore granted and vested it in a committee of three officers, two of them belonging to the Legislative branch of the Government, but Section 18 continued the authority of the Governor-General to appoint the president and vice-president of the bank.

The statute was again amended by Act 2938, passed January 30, 1921, whereby the capital stock was increased to fifty million pesos (Sec. 2) but at no time were the shares held by the public to equal or exceed the number held by the Government, and in Section 4 it was provided:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

By Section 16 of that Act the Board of Directors was increased from five to nine, all to be elected by the stockholders, which Board of Directors was by Section 17 authorized to elect from among their number a president and vice-president and to appoint, with the advice and consent of the Board of Control, a general manager who is chief executive of the bank. It is further provided (Section 22):

> "The Insular Auditor shall be ex-officio auditor of the National Bank and shall, with the advice and consent of the Board of Control appoint a representative who shall be chief of the auditing department of the Bank. All the other employees of the department shall be appointed by the Insular Auditor who, with the approval of the Board of Control, shall fix the salaries of the same as well as that of his representative, the chief of the Department. * * *"

And Section 44 provides:

> "* * * the Secretary of Finance, at the request of the board of directors of the Bank duly approved by the Board of Control, whenever in his judgment the general interests of the country require it, shall be authorized to suspend for such period as may be necessary the requirement of maintaining the proportion of the reserve specified in this Act. * * *"

In addition, the establishment of various foreign agencies, the rediscounting of commercial paper, and the removal of the general manager cannot be accomplished except with the advice and consent of the Board of Control. Its approval is also required in fixing the salary of the general manager and assistant general manager, in the appointment of employees of the auditing department, and in fixing the amount of their salaries; in guaranteeing by the bank of the principal and interest of the bonds of industrial companies or the purchase of their bonds, and in the payment of additional compensation to the president or vice-president who temporarily perform the duties of other employees.

The Philippine Legislature also created the following corporations, directed that stock therein be purchased and appropriated public funds to be used to purchase, in most instances, at least fifty-one per cent (51%) of the capital stock:

Act No.	*Name*	*Authorized Capital*
2705	National Coal Company	3,000,000 pesos
2814	National Petroleum Company.....	500,000 "
2849	National Development Company.....	50,000,000 "
2855	National Cement Company.....	500,000 "
2862	National Iron Company.....	500,000 "

In each of the said Acts the voting power of the shares of stock held by the government was vested by the legislature exclusively in a committee or board consisting of the Governor-General, the President of the Senate and the Speaker of the House of Representatives.

3. In order to ascertain the validity and legality of the several boards or committees under consideration it is necessary to determine:

A. Whether membership in such board or committees is a civil office, and

B. Whether the legislature has the legal right to make the appointment of members to such board or committee.

These questions will be considered in the order stated.

A

It is said in Black's Constitutional Law (3rd Edition, page 286):

> "* * * It is true that we cannot find in the Constitution an express grant of power to Congress to grant charters of incorporation. But if a bank, a railroad, a

telegraph company, or any other kind of corporation is a means or agency needed by Congress in the exercise of its admitted powers, or conducive to their due execution, and plainly adapted to the accomplishment of that end, then Congress has power, under this clause of the Constitution, to incorporate it."

The Organic Act is silent on the right of the legislature to create corporations. Such right is not here questioned. A corporation necessarily acts through its officers and agents and in the Philippine National Bank the Board of Control being vested with the exclusive power to vote the stock held by the Government, which was required to be a controlling amount, became an agency of the Government, which could always elect a majority of the directors of the Bank, and thus control its action.

It is clearly apparent that this Board of Control not only was the proxy for the Government to vote its stock, but on account of its duties was, in fact, as its name implies, a *"Board of Control"* with power to determine the policy of this bank, in which fifty-one per cent of the capital stock was owned by the Government and paid for with public money.

In the case of *Clark* vs. *Stanley* (66 N. C. 60), the legislature of North Carolina passed an Act giving to the President of the Senate and Speaker of the House of Representatives the power to appoint "all proxies and directors in all corporations in which the State has an interest," and the question arose as to whether in such appointment the President and Speaker would be filling a public office and be *public officers*. The court said:

> "A public office is an agency for the State, and the person whose duty it is to perform this agency is a public officer. This we consider to be the true definition of a public officer in its original, broad sense. The essence of it is the duty of performing an agency, that is, of doing some act or acts or series of acts for the State.
>
> "Public officers are usually required to take an oath, and usually a salary or fees are annexed to the office, in which case it is an office 'coupled with an interest.' But the oath and the salary or fees are mere incidents and constitute no part of the office. Where no salary or fees are annexed to the office, it is a naked office—honorary—and is supposed to be accepted merely for the public good. This definition also excludes the idea that a public office must have continuance. It can make no difference whether there be but one act or a series of acts to be done; whether

the office expires as soon as the one act is done or is to be held for years or during good behavior. This incident, however, need not be considered, for here is continuance; the duty is imposed upon the President of the Senate and the Speaker of the House of Representatives for all time to come."

See also *State* vs. *Hocker*, 39 Fla. 477; 63 Am. S. Rep. 174, cases cited; *Houston* vs. *Tate*, 38 N. C. 377.

A somewhat similar question arose in Florida, *In re Members of Legislature* (39 Sou. Rep. 63). In that case the legislature passed an Act creating a board of control which was charged with the duty of locating and continuously and permanently managing State institutions of learning, and the Governor, who was authorized to make the appointments, asked the opinion of the State Supreme Court as to whether members of the legislature at the time the statute was passed could be appointed as members of the board, in view of the constitutional provision that "no senator or member of the House of Representatives shall during the time for which he was elected be appointed or elected to any civil office under the Constitution of this State, that has been created or the emoluments of which shall have been increased during such time." The court said it was first necessary to determine whether members of such board would be civil officers, and in passing on that point held:

"Members of a board of control created by law, who are charged with the duty of locating and continuously and permanently controlling and managing State institutions of learning, whose terms of office are definitely fixed, with provision for removal and appointment by the Governor to fill vacancies on such board, and the office being continuous and permanent and remaining to be filled, though the incumbents may die or resign, are civil officers, under the Constitution of this State. The fact that there is no salary or emolument, like an oath of office, is an incident to office merely, and not a necessary element in the determination of its character."

Mechem, in his work on Public Office and Officers, Edition of 1890, Section 16, declares:

"An office whose duties and functions require the exercise of discretion, judgment, experience, is an office of trust, and it is not necessary that the officer should have

the handling of public money or property, or the care and oversight of some pecuniary interest of the Government."

Article 401 of the Penal Code of the Philippines provides:

> "For the purpose of applying the provisions of this and of the preceding titles of this book, any person who, by direct provision of law, by popular election, or appointment by competent authority, shall take part in the performance of duties in the public service shall be deemed a public officer."

The functions of these various boards and committees as set out in the statutes creating them clearly show that they can be properly performed only by men of experience, discretion, and judgment, and therefore are positions of trust. "An office embraces the idea of tenure, duration, emoluments and duties, and these ideas cannot be separated, and each considered separately. All taken together constitute the office." *Kendall* vs. *Raybould*, 44 Pac. (Utah) 1034; *U. S.* vs. *McCrory*, 91 Fed. 295; "Words and Phrases," title, "Office."

From the foregoing I am of opinion that the "Boards of Control" and "Committees" appointed by the legislature in the statutes referred to are civil offices, and that the members thereof are public officers within the meaning of the Organic Act (39 Stat. 454).

B

The Philippine Organic Act, Section 21, provides:

> "That the supreme executive power shall be vested in an executive officer whose official title shall be 'The Governor General of the Philippine Islands. * * * He shall, unless otherwise herein provided, appoint by and with the advice and consent of the Philippine Senate, such officers as may now be appointed by the Governor General, or such as he is authorized by this Act to appoint, or whom he may hereafter be authorized by law to appoint. * * * He shall have general supervision and control of all of the departments and bureaus of the government in the Philippine Islands as far as not inconsistent with this Act. * * *"

It also provides in Section 22:

> "* * * Provided, that *all* executive functions of the government *must be* directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General." (Italics supplied.)

Section 8 of the Organic Act is as follows:

> "That general legislative power, except as otherwise herein provided is hereby granted to the Philippine Legisture, authorized by this Act."

And the last sentence of Section 18 provides:

> "No senator or representative shall during the time for which he shall have been elected, be eligible to any office the election to which is vested in the legislature. * * *."

The Organic Act separated the power of the Philippine Government into these distinct branches, the executive, the judicial, and legislative, much in the same manner as these powers are distributed in the Federal Government, but put special emphasis on the executive power by expressly providing that *all* executive functions *must be directly* under the Governor-General or within one of the Departments under his control. The distribution of powers is also set forth in Section 15, Philippine Administrative Code, and in Section 80 of that Code, in defining "Particular Powers and Duties of the Governor-General," the following appears:

> "To nominate and appoint officials to *permanent positions in the service of the Government* of the Philippine Islands, with the advice and consent of the Upper House of the Philippine Legislature and not otherwise. (Italics supplied.)

More *permanent positions* can scarcely be imagined than the membership of these boards. They are made to attach to the office of President of the Senate and Speaker of the House of Representatives, and continue so long as these offices exist. No provision is made for removal and it would seem that death is the only event that would cause a vacancy on the board, which would be filled immediately by the election of the legislative suc-

cessor. Of course the provision of the code could be repealed by the Legislature, but if such was the intention it would seem that express terms would have been used, rather than to do so by implication.

It is sometimes difficult to determine to which of the branches of the government certain powers rightfully belong, for the reason that the line of separation is not always clearly defined.

> "The control, administration, and disposition of the property and funds of a state, and the appropriation thereof to the payment of debts, are powers appertaining exclusively to the legislative department." (Black—Constitutional Law, 3rd Ed. 365). But "the legislature can not lawfully usurp any of the functions confided by the constitution to the executive department. Thus, it is the generally accepted doctrine that appointment to office is an executive function which can not be taken away from that department by the legislative branch. * * * The legislature may provide by law for the appointment of all officers not provided for in the constitution, but the appointing power must be lodged somewhere in the executive department." Black, Constitutional Law, 3rd Ed. 86. *Pratt* vs. *Breckinridge*, 65 S.W. (Ky.) 136.

The powers granted to the Governor-General correspond closely to those of the President or the Governor of a State. With reference to appointment to office by the chief executive the general law is stated as follows:

> "With the exception of the small number of offices which are created by the constitution, it is the right and duty of congress to decide what offices shall be created and for what purposes. That is a legislative function. *But when the office is brought into existence, it is for the executive to choose the incumbent.* For, in order to the effective administration, it is necessary that those officers, at least, whose duties are not merely clerical but involve the exercise of discretion and are political in their character, should be in sympathy with the executive for the time being. But at the same time it was deemed necessary to impose a check upon this great power of the President, lest he should be able, by the unrestrained choice of the federal officers, to subvert the whole administrative machinery of government to his own selfish or disloyal purposes. To this end, rejecting unsuitable nominations has

been lodged with the senate." Black—Const. Law, 3rd Ed., 127. (Italics supplied.)

And the same author at page 318, with reference to the "Independence of Executive," says:

> "In regard to the manner of exercising those powers which the constitution specifically confides to the governor, it seems that the legislature, while it cannot, under pretense of regulation, deprive the executive of any branch of his constitutional power, or unduly hinder him in the exercise of it, may yet make rules for his governance in many cases where his authority over the subject is not exclusive of that of the legislature, or where the constitution has not furnished the exclusive rule for the exercise of the power."

The case of *State* vs. *Washburn*, 160 Mo. 680, 90 Am. S. Rep. 403, arose over a statute wherein the legislature provided for the appointment, by the Governor, of three election commissioners in cities having over 100,000 inhabitants, "one of said commissioners to be a member of the leading political party opposed to that to which the chairman and secretary so appointed belong, and shall be chosen from three eligible citizens named by the city central committee of the said leading party politically opposed to that to which the chairman and secretary belong." The Governor appointed three commissioners for Kansas City, one as president, one as secretary and the third from the leading party politically opposed to the other two. He possessed all the qualifications required but was not one who had been nominated by the city central committee of his party, and the question was, did the Governor have the lawful authority to appoint him. The court held:

> "Election commissioners are state officers, and exercise powers properly belonging to the executive department of the state government and must trace their right to office to that department. * * *
>
> "The legislature may pass a statute prescribing the manner in which an appointment to an executive office shall be made but it can not make the appointment itself nor authorize anyone not connected with the executive department to make it. It can not rob the executive of the power of appointment to office by conferring it on an outside unofficial agency of its own appointment. * * *

> Appointment to a governmental office is in itself the exercise of a governmental function and can be exercised only by a governmental officer *and not by the legislature.*" (Italics supplied.)

The case of *Shoemaker* vs. *United States* (147 U. S. 283) is one in which the right of Congress to make appointment of members of a commission was questioned. In that case Congress by the Act of September 27, 1890 (25 Stat. 492), created a commission consisting of the Chief of Engineers of the United States Army, the Engineer Commissioner of the District of Columbia and three citizens to be appointed by the President, by and with the advice of the Senate. They were directed to select the land for Rock Creek Park, appraise the value thereof, and perform certain other duties. The plaintiff brought an action to set aside certain acts of the Commission, based on various grounds, one of which challenged the constitutionality of the said Act of Congress, for the reason that two members of the Commission were appointed by Congress and not by an executive officer or court. In passing on that question the court held:

> "It is within the constitutional power of Congress, in legislating for the creation of a commission charged with public duties, to provide that some members of it shall be appointed by the President, by and with the advice and consent of the Senate, and that other members of it shall consist of officers in the service of the United States, who had been appointed by the President and confirmed by the Senate, when the duties of the new office are germane to those of the offices already held by the latter.
>
> "Congress may increase the duties of an existing office without rendering it necessary that the incumbent should be again nominated, confirmed and appointed."

From the reasoning of the court in deciding that point the inference is clearly to be drawn that had the two members named by Congress not been theretofore appointed by the executive, and the duties required of them on the commission been other than extension of the duties they were by virtue of their offices already performing, the appointment by Congress would have been unauthorized.

Congress unquestionably has the authority to legislate for the Philippine Islands. It may do so without regard to constitutional limitations so long as there is no violation of what is commonly called the "natural rights" of persons. Congress in dealing with

the Philippine Islands may delegate legislative authority to the Philippine legislature (*Dorr* v. *United States*, 195 U. S. 138), which then becomes the agent of Congress (*United States* v. *Heinzmann*, 206 U. S. 370). When so delegated the Philippine legislature can exercise only such legislative power as is granted or which is necessarily incident thereto. The delegation of legislative power in the Organic Act was general except as limited therein, and in defining the power of the Governor-General it was provided that his executive power should be "*supreme*." Obviously Congress meant by that language that he should have complete, unhampered executive authority, otherwise the word *supreme* would not have been used in defining his powers, which was also stressed in Section 22 by the mandatory provision that *all executive functions must be directly under* the Governor-General or within one of the executive departments under his control. Clearly this is a limitation on any legislative action that would limit, curtail, or destroy his executive authority.

The action of the Philippine Legislature in creating the various boards and committees involved in the statutes under examination and definitely naming the personnel of which such boards and committees shall be composed, is in effect creating an office and at the same time filling it. Such action encroaches on the powers of the executive department, destroys the fundamental principle of the separation of powers in government and violates the doctrine that the legislature has the power and authority to make the laws, but the duty of executing them is on the executive department. In my opinion the legislature was without legal authority to make the appointment of the members of the boards and committees as was done in these statutes, and that conclusion makes it unnecessary to determine whether a member of the Philippine Legislature is ineligible for such appointment.

In view of the fact that my conclusions in this matter may seriously affect activities in which the Philippine Government is engaged and which it conducts by these various boards or committees, it is recommended that the papers be transmitted to the Attorney General with a request for his opinion.

J. A. HULL, *Major General,*
The Judge Advocate General.

[redacted]

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In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 564

MILTON E. SPRINGER, DALMACIO COSTAS, AND Anselmo Hilario, petitioners

v.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS

No. 573

GREGORIO AGONCILLO, BALDOMERO ROXAS, AND Catalino Lavadia, petitioners

v.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinions of the Supreme Court of the Philippine Islands (No. 564, R. 69; No. 573, R. 217) have not yet appeared in the official Philippine reports, but the opinion in No. 564 is published in the Offi-

cial Gazette of the Philippines, No. 56, May 10, 1927, p. 1232; and the opinion in No. 573 is published in the Official Gazette, No. 67, June 4, 1927, p. 1488.

JURISDICTION

The final judgments of the Supreme Court of the Philippine Islands were entered on April 11, 1927. (Case No. 564, R. 212; Case No. 573, R. 270.)

The petition for certiorari in case No. 564 was filed September 28, 1927, and that in case No. 573 on October 1, 1927, and the petitions were granted November 21, 1927. (Case No. 564, R. 215; Case No. 573, R. 272.) In each case the petition was filed within six months from the date of the judgment.

In each case the question is whether an Act of the legislature of the Philippine Islands is in conflict with the Act of Congress known as the Jones law, which constitutes the Organic Act of the Philippine Islands, and the Supreme Court of the Philippines held that the Acts of the Philippine legislature are in conflict with the Act of Congress, so that a statute of the United States is involved in each case.

Section 7 of the Act of February 13, 1925, gives this Court power to review by certiorari a final judgment of the Supreme Court of the Philippines in any case "wherein * * * any statute * * * of the United States is involved." Section 8(a) of the Act of February 13, 1925, provides that "writs of certiorari to the Supreme Court of the Philip-

pine Islands may be granted where application therefor is made within six months" after the entry of the judgment to be reviewed.

QUESTIONS PRESENTED

The questions presented are whether Acts of the Philippine legislature, which place in a "Board of Control" or "Committee," consisting, *ex officio*, of the Governor General, the President of the Philippine Senate, and the Speaker of the House of Representatives, power to vote government-owned shares of stock of the Philippine National Bank and the National Coal Company, of which the Philippine government owns more than a majority, and power thereby to select, appoint, and remove the managing officers and directors of those corporations, with the resulting power to control and direct the operations and management of those corporations, are in conflict with the Organic Act under which the Philippine government is organized, which effects a separation of legislative, executive, and judicial power, and confers the executive power on the Governor General, gives him general supervision of all departments and bureaus of the government, and directs that all executive functions of the government must be directly under him or within one of the executive departments under his supervision and control.

The ultimate question is whether the power to vote the stock of the two corporations and to select and remove their managing agents and officers, and

through that power to exercise continued control and supervision over the operations and conduct of the business of these two corporations are executive or legislative functions.

STATUTES INVOLVED

The charter of the National Coal Company is found in Act of the Philippine Legislature No. 2705, approved March 10, 1917, the pertinent sections of which are as follows:

> SEC. 2. The said company shall be subject to the provisions of the Corporation Law in so far as they are not inconsistent with the provisions of this Act * * *.
>
> SEC. 4. The Governor General on behalf of the Government of the Philippine Islands shall subscribe for fifty-one per centum of said capital stock, and the remainder shall be offered to the public. * * * The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor General, the President of the Senate, and the Speaker of the House of Representatives.
>
> SEC. 6. (Appropriates 1,530,000 pesos for investment in the stock.)

Act No. 2822, approved March 5, 1919, directed the Governor General to subscribe for at least 51% of said capital stock of the National Coal Company instead of for exactly 51% as originally provided.

The charter of the Philippine National Bank is found in Act No. 2612, approved February 4, 1916, the pertinent provisions of which are as follows:

> SEC. 2. The said National Bank * * * shall have power * * *
>
> (*f*) To exercise, further, the general powers mentioned in the Corporation Law in so far as they are not inconsistent or incompatible with the provisions of this Act.
>
> SEC. 3. (Fixes capital at 20,000,000 pesos; 200,000 shares; 100 pesos per share.)
>
> SEC. 4. The Government of the Philippine Islands not later than January thirty-first, nineteen hundred and seventeen, shall purchase one hundred and one thousand shares, at par, of the said National Bank, the payment for said shares of the Government to be made as hereinafter provided. Ninety-nine thousand shares of said capital stock shall be offered to the public at par, as hereinafter provided.
>
> SEC. 5. (Appropriates for the payment of Government shares, 1,300,000 pesos out of general funds of the Insular Treasury, and the further sums of 1,000,000 pesos on or before July 31, 1916, and 1,000,000 pesos on or before January 31, 1917, "which shall be invested from the insurance fund created by Act No. 1728, the public works bonds sinking fund, created by Act No. 1729, and the friar lands bonds sinking fund, created by Act No. 2550.") * * * "*And provided further*, That the voting power of all stock purchased directly by the Philippine Government as an

investment from the general funds of the Government, and the voting power of all stock purchased for the benefit of the insurance fund, of the public works bonds sinking fund, and of the friar lands bonds sinking fund, shall be vested exclusively in the Governor General.

SEC. 20. The affairs and business of the National Bank shall be managed by a board of directors consisting of the president of the Bank, who shall be chief executive thereof and chairman of the board at the same time, one vice president, who shall assist the president and act in his stead in case of absence or incapacity, and five members elected as hereinafter provided. * * *.

SEC. 21. The president and vice president shall be appointed by the Governor General, by and with the consent of the upper house of the Philippine Legislature, and may be removed for cause by said Governor General, by and with the consent of said house. The five remaining members shall be elected and may be removed in accordance with the provisions of Act No. 1459, the Corporation Law.

SEC. 26. The Insular Auditor shall be *ex officio* auditor of the National Bank. * * *.

SEC. 47. All profits assigned as dividends to the shares of the Government shall be paid into the Insular Treasury, for the general funds thereof, and shall be available for any appropriation.

SEC. 51. The board of directors of the National Bank is hereby authorized to adopt

the necessary regulations for its operation, in conformity with this Act and the Corporation Law.

Act No. 2747, approved February 20, 1918, amended the previous Act relating to the Philippine National Bank as follows:

SEC. 4. * * * The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor General, the President of the Senate, and the Speaker of the House of Representatives.

SEC. 5. (Amends Section 5, *inter alia*, by striking out the original provision which had placed in the Governor General the voting power of the Government stock.)

Act No. 2938, approved January 30, 1921, amended the charter of the Philippine National Bank in the following particulars:

SEC. 3. (Increases Bank's capital from 20,000,000 pesos to 50,000,000 pesos by a new "second" issue of 300,000 shares.)

SEC. 4. The Government of the Philippine Islands, not later than June 30, 1921, shall purchase all remaining shares of the first issue and part of those of the second issue to the aggregate number of not less than one hundred and fifty-three thousand, at par, the payment for said shares of the Government to be made as hereinafter provided. The remaining shares may be offered to the provincial and municipal governments or to

the public at a price not below par which the board of directors of the bank shall from time to time determine: *Provided*, That the Government of the Philippine Islands, upon agreement with the board of directors of the bank, may at any time after June 30, 1921, purchase all or part of the stock on hand at a price not below par.

The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be "Board of Control," composed of the Governor General, the President of the Senate, and the Speaker of the House of Representatives.

SEC. 8. At no time shall shares be sold to the public if, as a result thereof, the part of the capital stock held by private investors will equal or exceed the part owned by the Government of the Philippine Islands.

SEC. 10. Said National Bank is hereby authorized:

* * * * *

(*f*) To invest a sum not exceeding ten per cent of its paid-up capital in the purchase of shares of stock of any banking corporation constituted under the laws of any State of the United States and to hold the same: *Provided, however,* That, subject to resolution of the board of directors and the approval of the Board of Control, it may incorporate any of its foreign agencies now or hereafter established, under the laws of the

country or estate (State) where the same may be located, and may retain the stock of such corporation as an investment.

SEC. 14. Said National Bank is hereby authorized to issue circulating notes * * *: *Provided, however*, That in cases of emergency, and subject to the approval of the Board of Control, the Secretary of Finance may authorize the National Bank to rediscount commercial paper of not over six months' maturity, secured by exports or imports, and may issue against said commercial paper circulating notes * * *.

SEC. 16. (Increases number of directors to nine.)

SEC. 17. (Directors to elect president and vice-president from amongst themselves.)

SEC. 18. The orders and resolutions of the board of directors shall be carried out by a general manager who shall be chief executive of the bank and shall be paid an annual salary to be fixed by the board of directors with the approval of the board of control, and an assistant general manager, who * * * shall be paid a salary to be fixed by the board of directors, with the approval of the board of control. The general manager shall be appointed by the board of directors, with the advice and consent of the board of control, and may be removed in a like manner.

SEC. 22. The Insular Auditor shall be *ex officio* auditor of the National Bank and shall, with the advice and consent of the

board of control, appoint a representative who shall be chief of the auditing department of the bank. All the other employees of the department shall be appointed by the Insular Auditor who, with the approval of the board of control, shall fix the salaries of the same as well as that of his representative, the chief of the department. * * * The representative of the Insular Auditor shall make a quarterly report on the condition of the bank to the Governor General of the Philippine Islands, through the Secretary of Finance, to the Board of Control, to the Insular Auditor, and to the board of directors of said bank. * * *.

SEC. 23. All the other officers and employees of the National Bank shall be appointed and removed by the Board of Directors, on recommendation of the general manager. Said officers and employees shall not be subject to the Civil Service Law, and their duties and compensations shall be fixed by the general manager, with the approval of the board of directors: *Provided, further*, That whenever the president or vice president, by order of the Board of Directors, shall temporarily or permanently perform duties incumbent upon other officers or employees, they may be granted compensation additional to the bonus fixed by this Act for the president and vice president; but the resolution of said board shall not take effect until the written approval of the members of the Board of Control has been obtained. The orders of said board of directors in this

respect may be modified or repealed at any time, provided they are approved in each case by the Board of Control.

SEC. 38. All profits assigned as dividends to the shares of the Government shall be paid into the Insular Treasury, for the general funds thereof.

SEC. 44. The National Bank shall at all times keep on hand * * * a sum in lawful money * * * computed as follows:

Twenty-five per cent of the circulating notes outstanding * * *.

Twenty per cent of the demand deposits outstanding * * *: *Provided, however,* That the Secretary of Finance, at the request of the board of directors of the bank, duly approved by the Board of Control, whenever in his judgment the general interests of the country require it, shall be authorized to suspend for such period as may be necessary the requirement of maintaining the proportion of the reserve specified in this Act. * * *.

SEC. 45. The National Bank is hereby authorized to guarantee * * * bonds issued by duly incorporated companies for the erection of an addition or additions to industrial plants or manufactories principally used for the manufacture and preparation of the products of the Philippine Islands: *Provided, however,* That such guarantee shall only be lawful when approved by the Board of Control.

Subject to the same approval, the National Bank is hereby authorized to purchase bonds

> issued by any duly incorporated company engaged in the manufacture or preparation of products in the Philippine Islands. * * *.

The by-laws of the bank provide (R. 63):

> SEC. 40. The stockholders at any regularly called meeting shall have the following powers:
>
> * * * * *
>
> (c) To exercise any powers not expressly conferred upon the Board of Directors or any executive officer of the Bank, and not in conflict with the charter of the Bank, or with the Corporation Law.

The General Corporation Law of the Philippine Islands, found in Act No. 1459, approved by the Philippine Commission March 1, 1906, contains the following:

> SEC. 34. Directors of a corporation may be removed from office by vote of two-thirds of the members entitled to vote, or, if the corporation be a stock corporation, by a vote of the stockholders holding or representing two-thirds of the subscribed capital stock entitled to vote: *Provided, however,* That such removal shall take place either at a regular meeting of the corporation or at a special meeting called for the purpose * * *.

The Organic Act, known as the Jones Law, approved August 29, 1916 (c. 416, 39 Stat. 545; U. S. C. Title 48, Sections 1041 et seq.), contains the following provisions:

SEC. 7. That the legislative authority herein provided shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law, civil or criminal, continued in force by this Act as it may from time to time see fit.

* * * * *

SEC. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act.

SEC. 12. That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the Senate and the other the House of Representatives, and the two houses shall be designated "The Philippine Legislature":

* * *.

SEC. 18. * * *. Both houses shall convene at the capital * * * and organize by the election of a Speaker or a presiding officer, a clerk, and a sergeant at arms for each house, and such other officers and assistants as may be required.

SEC. 19. * * *

All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same.

* * *.

SEC. 21. That the supreme executive power shall be vested in an executive officer, whose official title shall be "The Governor General of the Philippine Islands." * * *

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He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor General, or such as he is authorized by this Act to appoint * * *. He shall have general supervision and control of all of the departments and bureaus of the government in the Philippine Islands as far as is not inconsistent with the provisions of this Act * * *. * * * He shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands * * *. * * *

SEC. 22. * * * The Philippine Legislature may thereafter by appropriate legislation increase the number or abolish any of the executive departments, or make such changes in the names and duties thereof as it may see fit, and shall provide for the appointment and removal of the heads of the executive departments by the Governor General: *Provided*, That all executive functions of the government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General. * * *

STATEMENT

These actions were instituted in the Supreme Court of the Philippine Islands by the Government of the Philippines to oust the petitioners from po-

sitions as directors of the Philippine National Bank or of the National Coal Company, corporations, a majority of the stock of which is owned by the Philippine Government. The grounds for the suits were that the petitioners had been elected to the offices of directors of one or the other of these corporations, by vote of the government-owned shares, cast by the President of the Philippine Senate and the Speaker of the House of Representatives, majority members of a committee or board of control created by Acts of the Philippine Legislature, with power to vote the Government's shares, and that voting the stock and electing the directors and managing agents of these corporations and governing their operations in these and other ways provided by these Acts, were executive functions entrusted by the Organic Act to the Governor General, and that the Acts of the Philippine Legislature divesting him of these powers were in conflict with the Organic Act. The Supreme Court of the Philippine Islands sustained these contentions and ousted these petitioners from their respective offices as directors.

The National Coal Company, case No. 564, *Springer et al.* v. *The Government of the Philippine Islands*, was disposed of on a demurrer to the bill of complaint, and the material facts are those contained in the complaint and admitted by the demurrer. (R. 70.)

The National Coal Company was chartered by the Act of March 10, 1917, and was given the gen-

eral powers provided in the General Corporation Law, and was authorized "to prosecute the business of developing coal deposits in the Philippine Islands, and of the mining, extracting, transporting, and selling the coal contained in said deposits." The capital stock was fixed at 3,000,000 pesos, divided into 30,000 shares. It was provided that the Governor General, on behalf of the Philippine Islands, should subscribe for 51% of the stock, and that the remainder should be offered to the public, and that the voting power of the stock owned by the government of the Philippine Islands should be vested "in a committee consisting of the Governor General, the President of the Senate, and the Speaker of the House of Representatives." By the Act of March 5, 1919, the Governor General was directed to subscribe for at least 51% of the stock. Of the 30,000 outstanding shares of the National Coal Company the Philippine Islands own 29,881 shares. (R. 34.)

A special meeting of the shareholders of the corporation was held December 6, 1926, for the purpose, among other things, of electing directors, the regular annual meeting, which should have been held in August, not having been attended by a quorum. (R. 4.) At this special meeting the Governor General, assuming the invalidity of the provision of the charter of the Coal Company vesting the voting power in the committee, of which the President of the Senate and the Speaker of the House of Representatives were *ex officio* members,

assumed to exercise the voting power and cast the vote of the government-owned shares for the election of five directors. (R. 5.) The President of the Senate and the Speaker of the House of Representatives, on the other hand, constituting a majority of the committee established by the charter, assumed to cast the vote of the government-owned shares for candidates selected by them. (R. 9, 10.) The petitioners, Springer, Costas and Hilario, were voted for by the President of the Senate and the Speaker of the House of Representatives, and not by the Governor General. Two others of the five directors to be elected were voted for by the Governor General and by the two members of the Legislature, so their elections are not in dispute. The three petitioners have since assumed to act as directors of the Coal Company, and to test their title to the positions this suit, in the nature of *quo warranto*, was instituted.

The Philippine National Bank Case, No. 573, was disposed of below on the admissions in the pleadings and on a stipulation of facts. (R. 165.) The National Bank was chartered by the Act of February 4, 1916, with an authorized capital of 20,000,000 pesos, divided into 200,000 shares, of which the Government was to purchase 101,000 shares. Originally, the voting power of the government-owned stock was placed in the hands of the Governor General, and there was also placed in his hands the power to appoint and remove, with the

consent of the Philippine Senate, the president and vice president of the bank, the president to be the chief executive officer of the bank. By the Act of February 20, 1918, the Governor General was deprived of the voting power of the government-owned stock, and it was vested in a "committee" consisting *ex officio* of the Governor General, the President of the Senate, and the Speaker of the House of Representatives. By the Act of January 30, 1921, the bank's charter was again amended so as to increase its authorized capital to 50,000,000 pesos, resulting in an additional authorized issue of 300,000 shares, and the Act provided that the Philippine Government should purchase all the remaining shares of the first issue and not less than 153,000 shares of the second issue, and that the Philippine Government should at all times retain a majority of the stock. This Act provided that the voting power of the stock of the Bank should be "vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor General, the President of the Senate, and the Speaker of the House of Representatives." The appointment of the president and vice-president of the bank was taken from the Governor General by provision that they should be elected by the directors from among their own number, and the president was no longer to be the bank's chief executive, but by Section 18 a general manager was provided for, to be appointed or removed by the board of

directors, with the advice and consent of the Board of Control and to be "chief executive of the bank" and to be paid an annual salary to be fixed by the Board of Directors, "with the approval of the Board of Control." It was further provided that the chief of the auditing department of the bank should be appointed by the Insular Auditor "with the advice and consent of the Board of Control." The Board of Control was given further administrative duties in the management of the bank. The Philippine Government acquired practically all of the bank's issue of capital stock, so that on January 17, 1927, of 100,000 shares outstanding, 97,332 belonged to the Philippine Government, and only 2,668 to private individuals. (R. 199.)

The National Bank was given power to loan money on the security of real estate, to make loans on commercial paper, to make loans secured by lien or chattel mortgage on harvested or stored crops, to make loans to agriculturists, to issue and sell bonds up to 90% of real estate loans held by the bank, to issue notes intended to circulate as money, which while not made legal tender were made receivable in payment of taxes and all claims owing to the Government, and generally was to do a banking business, to act as a depository for public funds, and as a fiscal agent for the Insular, Provincial, and Municipal Governments. (R. 45, case 573.)

The President of the Senate and the Speaker of the House of Representatives hold their offices

during the pleasure of these branches of the Legislature.

The General Corporation Act provides that the directors of a corporation may be removed from office by vote of two-thirds of the stockholders, so that the President of the Senate and the Speaker of the House of Representatives, acting *ex officio* as members of the Board of Control and exercising the voting power of the Government stock, may remove directors at any regular meeting or at a special meeting called for that purpose. Under the by-laws, special meetings of the stockholders may be held on 15 days' notice. (R. 64.) The representatives of the two branches of the Legislature sitting on the Board of Control and constituting a majority of its membership, and exercising the voting power of the stock of the Philippine National Bank, retain continued domination and control over its affairs through the power to select the directors and chief executive and to remove them at will, and in this way, and by virtue of the other provisions of the amended charter allowing them to participate directly in the management of the Bank's affairs, to completely control the officers and directors of the bank in the conduct of the bank's business.

The operations of the National Coal Company and the Philippine National Bank seem to have been governed by these statutes until 1926, but their validity was not unquestioned. On August 15,

1923, Governor General Wood wrote to the Chief of the Bureau of Insular Affairs saying:

> I am inclosing herewith a list of the legislation, including many provisions of the Administrative Code, which attempt to curtail the power of supervision and control granted the Governor General in the Organic Act.

This list included the laws here in question and others.

On April 16, 1926, the Judge Advocate General of the Army gave an opinion to the Chief of the Bureau of Insular Affairs of the War Department (Appendix C, brief in opposition to petitions for certiorari), to the effect that the Acts of the Philippine Legislature, in so far as they deprive the Governor General of the power to vote the stock of these corporations and control their operations were void. The matter was then submitted to the Attorney General of the United States, who, on September 22, 1926, rendered an opinion to the same effect. (Appendix B, brief in opposition to petitions for certiorari.) Thereupon, the Governor General of the Philippine Islands, on November 9, 1926, issued Executive Order No. 37 (Philippine Official Gazette, Vol. 24, No. 135, November 11, 1926, p. 2419), in which, after referring to the opinions of the Judge Advocate General and the Attorney General, he directed that thereafter "the duties and powers heretofore exercised by said 'Board of Control' or 'Committee' " shall be exer-

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cised solely by the Governor General "pursuant to the executive power vested in him by the Organic Act."

A special meeting of the stockholders of the Philippine National Bank was called and duly held January 17, 1927, the stated purpose being, among other things, to consider the removal of Directors Agoncillo, Roxas, and Lavadia, petitioners in No. 573. (R. 186.) At that meeting the Governor General attended and assumed to represent the shares of stock owned by the Government. (R. 190.) The President of the Senate and the Speaker of the House of Representatives absented themselves from the meeting and declined to participate in its proceedings. The President of the Bank thereupon held that no quorum was present, as the Governor General had no power alone to represent the Government's shares (R. 196), and declared the meeting adjourned (R. 198). The Governor General and some 20 other persons owning shares of the Philippine National Bank remained at the meeting place and organized a meeting by the election of a chairman and secretary pro tem. (R. 198.) At that meeting the Governor General cast the vote of the shares owned by the Government for the removal from the office of director of the petitioners, Agoncillo, Roxas, and Lavadia, and cast his vote for the election of three other men to fill their places, and a fourth to fill another vacancy. (R. 207.) The three directors thus re-

moved by the vote of the Governor General have continued to assert the right to exercise the functions of directors of the Bank, and to oust them this suit was instituted.

SUMMARY OF ARGUMENT

I. The Organic Act under which the government of the Philippine Islands is organized is the fundamental law for the Philippines and any Act of the Legislature in conflict with that Organic Act is void. That Act conforms to our constitutional practice and provides for the separation of the executive, legislative, and judicial functions, and excludes the Legislature from exercising any function not legislative, with certain expressed exceptions. It is more specific in that in Section 22 it expressly provides:

> That all executive functions of the Government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General.

The Acts of the Philippine Legislature, read in connection with other statutes relating to the Philippine National Bank, the National Coal Company, and corporations in general, have the effect of stripping the Governor General of all direction or control over the Bank or Coal Company and of vesting the direction of the management and operation of those institutions in representatives of the two Houses of the Legislature selected by those Houses.

The President of the Senate and the Speaker of the House of Representatives are selected by those bodies and hold office during their pleasure. They, in turn, acting together on the so-called Board of Control, elect and remove the managing directors and agents of these corporations, and in the case of the Bank they also directly participate with those officers and agents in conducting the bank's affairs. The effect of these provisions is that the majority in the Legislature, acting through representatives doing their bidding, from day to day direct and control the operations and management of these institutions.

The selection and removal of the managing directors and officers of corporations a majority of the stock of which is owned by the Government, and the direction of the operations of those corporations through the exercise of that power, are not legislative functions. They do not constitute the making or repealing of laws or anything incidental to such legislative action. The voting of the Government's stock is itself not legislative, and the depriving the Governor General of all control of the operations of these corporations is in direct violation of that provision of the Organic Act contained in Section 22, which provides that all executive functions must be under the Governor General or within one of the executive departments under his supervision and control. It is not material whether the relation of the Philippine Government to these corporations is proprietary or sovereign, or whether the corpora-

tions are engaged in performing sovereign governmental functions or conducting private business. The power of the Philippine Legislature over matters in which the Philippine Government acts in a proprietary capacity is legislative. It has no more power to exercise administrative or executive functions over proprietary interests of the Government than it has over sovereign governmental functions, and the exclusion of the Legislature from participation in administrative or executive functions, and the granting of those functions to the Governor General and his subordinates, operate on all governmental matters whether proprietary or sovereign.

II. If membership on the "Board of Control" or "Committee" is a separate post or position from that of Governor General or of President of the Senate or of Speaker of the House of Representatives, then the selection by the Legislature or by either House of the persons to occupy that position is beyond legislative power, because in itself an executive act. If the functions to be exercised by members of the Board of Control or Committee are executive or administrative in character, the selection of those members is not a legislative act.

The ultimate question here is again whether voting the stock and directing the affairs of these corporations are executive functions and it is not important whether the position on the Board of Control or Committee is a separate office or post, or whether the Legislature has merely added certain

duties to those of the President of the Senate and the Speaker of the House of Representatives. It may not make appointments to executive or administrative positions, and it may not confer executive or administrative functions on legislative officials.

III. That Congress has not taken any action to affirmatively annul these statutes is of no consequence. The power reserved in the Organic Act to annul Acts of the Philippine Legislature relates to valid Acts passed under authority of the Organic Act and consistent with it. It was never contemplated that Acts of the Philippine Legislature, void because in conflict with the Organic Act, would become valid unless their invalidity be reiterated by Congress within a reasonable time. There is nothing in the Organic Act, nor in the decisions of this Court, which justifies the conclusion that an Act of the Philippine Legislature in conflict with the Organic Act becomes adopted by Congress as valid legislation through its failure to pass an Act annulling that which is already null.

ARGUMENT

I

THE VOTING OF THE SHARES AND DIRECTION OF THE CORPORATIONS' AFFAIRS INCIDENT TO THE VOTING POWER ARE EXECUTIVE FUNCTIONS, OF WHICH, UNDER THE ORGANIC ACT, THE LEGISLATURE MAY NOT DEPRIVE THE GOVERNOR GENERAL

The Organic Act is the constitution of the Philippine Islands. In framing it Congress has

made the distribution of powers among three departments familiar under our constitutional system. The separation of powers is the distinctive feature of the American constitutional system. *Kilbourn* v. *Thompson,* 103 U. S. 168.

In *Abueva* v. *Wood,* 45 Phil. 612, it was said (pp. 622, 632):

> The Government * * * in the Philippine Islands is divided under its charter or constitution (the Organic Act) into three great, separate, distinct, and independent departments; the executive, the legislative, and the judicial. * * *
>
> * * * Under the theory of the three distinct and independent departments of the government, it was not intended that one should encroach upon the field of duty of the other. * * *

The provisions of the Organic Act show that the legislative authority is vested in the Philippine Legislature and the executive authority in the Governor General. Such overlapping of the authority as exists is within the usual limits and is to be strictly limited. *Myers* v. *United States,* 272 U. S. 52. The Senate participates in the appointing power through confirmations, and the Governor General participates in legislation by his veto. In Section 20 the Legislature was given power to choose two resident commissioners to the United States. In other respects there is a clean-cut division of powers, with the implication that neither of the three departments may exercise any of the powers pertaining to the others.

These principles are recognized by a long line of Philippine decisions:

> *Barcelon* v. *Baker* (1905), 5 Phil. 87, 115.
> *United States* v. *Bull* (1910), 15 Phil. 7, 27.
> *Severino* v. *Governor General* (1910), 16 Phil. 366.
> *Alejandrino* v. *Quezon* (1924), 46 Phil. 83, 96.

The Organic Act provides that the supreme executive power shall be vested in the Governor General and that he shall have general supervision and control of all the departments and bureaus of the Government and be responsible for the faithful execution of the law, with the power to appoint officers by and with the advice and consent of the Senate. But the Organic Act does not stop there. It continues, in Section 22, to be most explicit in saying:

> That all executive functions of the Government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General.

The legislative power and that only is given to the Legislature. See *Myers* v. *United States, supra.*

There can be no dispute about these matters. The real question is whether the Acts creating the Board of Control and the Committee operate to withdraw from the Governor General or vest *ex officio* in legislative officers functions which are executive or administrative in their nature.

Since members of the Board of Control and of the Committee are public agents they may act by majority vote in the absence of any provision of law to the contrary. All the powers incident to the exercise of the functions of the Board or Committee may be exercised by the concurrent action of the President of the Senate and the Speaker of the House of Representatives. There is withdrawn from the Governor General the power to act except with the concurrence of one legislative official. In the case of the National Coal Company, the voting power carries with it the power to elect directors and the power to remove them. The General Corporation Act, which applies to the Coal Company, authorizes the removal of corporate directors by a vote of two-thirds of the stock at any regular meeting or special meeting called for that purpose. The by-laws of that corporation provide for the prompt calling of stockholders' meetings. (R. 15.) By reason of these interlocking provisions the "Committee" designated by the Legislature exercises continued direction over the operations of the Coal Company. Directors who do not do the bidding of the Committee may be promptly removed.

In the case of the National Bank, the control of the two branches of the legislature over the Bank's operations is even more direct. Not only may the Board of Control remove and appoint directors at will, through the exercise of the voting power at regular or special meetings of the stockholders, but

it participates in the selection of the general manager, who is the chief executive, and the board of directors may not act on a number of matters connected with the operations of the Bank without the concurrence and consent of the Board of Control. Adding to this the fact that the President of the Senate and the Speaker of the House of Representatives themselves hold those positions, and consequently their *ex officio* positions on the Board and Committee, at the pleasure of the respective Houses of the Philippine Legislature, and only so long as they satisfy the respective majorities of those Houses, it is apparent that the two Houses of the Philippine Legislature, acting through their chosen representatives, are from day to day directing the affairs of these two corporations. No one can doubt, because of these interlocking provisions and conditions, that those conducting the Bank's affairs are directly subservient to the Legislature in the conduct of the business of the Bank and the Coal Company. With the President of the Senate and the Speaker of the House acting together, the Governor General is deprived not only of the power to vote the Government's shares and to select managing agents and directors of these institutions, but of any supervision or direction over the operations of either corporation. There is more here than the legislative appointment to a position or office executive in nature; there is a continued and complete direction and control of the daily operations of

these corporations, according to the will of the majorities of the Houses of the Legislature and their leaders.

If the voting of the stock and the exercise of direction and control over the operations of these corporations are executive functions, then the provision in the Organic Act that the executive functions of the Government must be directly under the Governor General or within one of the executive departments under his supervision and control has been violated.

The petitioners and the Government seem to be in accord on the point that the ultimate question in this case is whether the voting of the stock and the exercise of continued direction and supervision over the daily operations of these two institutions, resulting from the voting power and the other provisions of law, are executive functions.

The answer to this question seems self-evident. It is found in the opinion of the court below in the *National Coal Company Case* (R. 100), where it was said:

> The administrative domination of a governmentally organized and controlled corporation is not a duty germane to the lawmaking power.

Executive power is the general administrative control of those executing the laws. *Myers* v. *United States,* 272 U. S. 52. Legislative power is the power "to make laws and to alter and repeal them." Cooley, Constitutional Limitations, 7th

Ed., p. 131. Legislatures have incidental powers, such as the power to appoint their own officers and assistants, deal with the quarters they occupy, and through committees, commissions, or otherwise, collect information as a guide to legislation, but no accepted definition of legislative power is broad enough to include the act of voting the stock of a corporation whose shares are owned by the Government and the selection and removal of the corporation's managing officers and agents and participation in and direction and control over the daily operations of such a corporation. The enactment of the laws defining the powers and activities of corporations organized and controlled by the Government and defining generally the power and duties of executive officials charged with the operations and supervision of such corporations and prescribing rules to guide the conduct of such officers and agents of the Government are legislative functions, but the execution of those laws, the selection of the men to execute them, and the administrative supervision and direction of the affairs of such corporations within the limits and rules prescribed by the legislature, are executive or administrative functions.

If the functions of the members of the Board of Control and Committee are legislative in character as contended by the petitioners, then, it may be asked, how can the act of the Legislature in naming the Governor General to places on each be justified? He is an executive, and it is beyond the power of

the Legislature to bestow legislative functions on him.

The uniform practice of our own Government has been to treat the administrative domination of a governmentally organized and controlled stock corporation as an executive function and not a duty germane to the law-making body. In no instance has Congress claimed or the President conceded that the right to vote Government-owned shares of stock rested in any one except in the President himself or men appointed by him, although by law the approval of the Senate has sometimes been necessary in the choice of directors.

The First Bank of the United States, organized by the Act of February 25, 1791 (c. 10, Section 11, 1 Stat. 191, 196) issued stock of which the President was authorized to subscribe for a part on behalf of the United States. Nothing was said in the Act as to the voting power, and we have been unable to find what official voted the shares on behalf of the United States, although it is probable that the Secretary of the Treasury did so.

The charter of the Second Bank of the United States (Act of April 10, 1816, c. 44, 3 Stat. 266) provided that a minority of the shares should be subscribed for by the United States; that the management of the corporation should be vested in 25 directors, five of whom were to be appointed by the President, by and with the advice and consent of the Senate, and the others by vote of the stockholders other than the United States.

By the Act of March 3, 1825 (c. 76, 4 Stat. 124), the Secretary of the Treasury was authorized to subscribe to shares of the Chesapeake and Delaware Canal Company, and it was provided that the Secretary of the Treasury should vote such shares for the directors and president of the corporation.

By the Act of March 2, 1829 (c. 27, 4 Stat. 350), the Secretary of the Treasury was authorized to subscribe to additional shares of the Chesapeake and Delaware Canal Company and also to shares in the Dismal Swamp Canal Company, and it was provided:

> That the Secretary of the Treasury shall vote for president and directors of the said companies respectively, according to such number of shares.

When the United States bought the property of the Panama Canal Company in 1904 it took 69-70ths of the capital stock of the Panama Railroad Company. By Executive Order of May 9, 1904, the President placed the Isthmian Canal Commission under the direction of the Secretary of War. The United States now owns all the stock of the Panama Railroad Company. (Report of the Isthmian Canal Commission, 1905, p. 18.) It is held in the name of the Secretary of War except for directors' qualifying shares, and the Secretary of War votes directly or by proxy the shares which are in his name.

The Federal Farm Loan Act (Act of July 17, 1916, c. 245, 39 Stat. 360) created farm loan banks

and provided that the Secretary of the Treasury should subscribe in behalf of the United States for all stock not taken within 30 days after the opening of the books for subscription. The Act provided that the Farm Loan Board should be appointed by the President by and with the advice and consent of the Senate, and that the Board should appoint the Government's directors on the land banks. The Act provided that three of the nine permanent directors of each Federal Land Bank should be appointed by the Federal Farm Loan Board. The Agricultural Credits Act of 1923 (Act of March 4, 1923, c. 252, 42 Stat. 1454, 1474) provided that the Federal Farm Loan Board should appoint three of the directors of each Federal Land Bank, and that the loan associations and the borrowers should nominate candidates, and from the three candidates standing highest on the list the Farm Loan Board should choose another director. The same Act provided, as amendments to Sections 201 and 205 of the Federal Farm Loan Act, that in each of the twelve cities in which there was a Federal Farm Loan Bank a Federal Intermediate Credit Bank should be established with a capital stock of $5,000,000, to be subscribed and held by the United States, and that the officers and directors of the several land banks should be *ex officio* officers and directors of the Federal Intermediate Credit Banks.

The Food Control Act of August 10, 1917, Section 2 (c. 53, 40 Stat. 276), authorized the President to create agencies for carrying out the pur-

poses of the Act. Thereupon the President issued Executive Order No. 2681, directing the formation of the Food Administration Grain Corporation under the laws of Delaware, all of the capital stock of which was purchased for the United States. The order named four directors and provided that three more should be chosen by the incorporators and that they be subject to change by and with the approval of the President, and that all officers of the corporation should be selected with the consent and approval of the President. Under the same Act, the President on July 8, 1918, authorized the formation of the United States Sugar Equalization Board, Inc., the entire stock to be held by the United States except qualifying shares. The President directed that the shares of the stock standing in the name of the United States should be voted by the Food Administrator or some one designated by him. (See Hearings before the Committee on Agriculture, House of Representatives, 63d Cong., 3d Sess., on H. J. R. 444, pp. 102, 124, Official Bulletin July 12, 1918.)

The Act of September 7, 1916 (c. 451, 39 Stat. 728), provided for the establishment of the United States Shipping Board, the members of which are appointed by the President. Section 11 authorized the Board to incorporate the Emergency Fleet Corporation with a capital stock of $50,000,000 and to subscribe for and vote not less than a majority of the stock.

The War Finance Corporation Act of April 5, 1918 (c. 45, 40 Stat. 506), created the War Finance Corporation, with a capital stock of $500,000,000, to be subscribed by the United States, provided that the directors should be the Secretary of the Treasury and four other persons to be appointed by the President with the advice and consent of the Senate, and declared that any director should be subject to removal by the President. By the Act of August 24, 1921 (c. 80, 42 Stat. 181), the Secretary of Agriculture was added to the board of directors.

By the Act of June 4, 1918 (c. 92, 40 Stat. 594, 595), the President was authorized to create a corporation to provide housing for war needs, with a capitalization not exceeding $60,000,000. It was provided:

> That where such corporation or corporations are created by authority of the President, representatives appointed by the President, or by such agency as he may designate to carry out the purposes of the said Act, shall subscribe to, own, and vote the capital stock thereof for and on behalf of the United States.

The United States Housing Corporation was organized under the laws of New York. (Report of the United States Housing Corporation, 1920, Vol. I, p. 59.)

The Act of July 9, 1918 (c. 143, chap. XVI, 40 Stat. 845), authorized the Director of Aircraft Production to form one or more corporations to

aid in aircraft production, and provided that he might, on behalf of the United States, subscribe for, purchase, and vote not less than a majority of the voting capital stock. Under this Act the United States Spruce Production Corporation was incorporated under the laws of Washington. The Director of Aircraft Production subscribed, on behalf of the United States, for all of the shares except qualifying shares. (Handbook of Economic Agencies of the War of 1917, p. 436; History of the Spruce Production Division, 83.)

Following the recommendation of the War Trade Board to the President, on October 1, 1918, and with his approval, that board organized under the laws of Connecticut the War Trade Board of the United States Russian Bureau, Inc., with a capital stock of $5,000,000, the shares being owned by the United States, and the board consisted of members of the War Trade Board, and the officers were all members or employees of the War Trade Board. (Report of the War Trade Board, 204; War Trade Board Journal, No. 16, p. 4.)

The Inland Waterways Corporation was created as a corporation of the District of Columbia by the Act of June 3, 1924 (c. 243, 43 Stat. 360), with a capital of $5,000,000 furnished by the United States. The Act provided:

> The Secretary of War shall govern and direct the corporation in the exercise of the functions vested in it by this Act.

If voting Government-owned shares of the stock of corporations and if directing and controlling the operations of corporations in which the Government owns shares of stock are legislative functions, the unbroken practice to the contrary is hard to explain.

In *Clark* v. *Stanley*, 66 N. C. 59, the court considered the validity of a statute by which the President of the Senate and the Speaker of the House of Representatives of the legislature of North Carolina were authorized to appoint proxies and directors for corporations in which the State was a shareholder. The court said (p. 65):

> Suppose an act: Whereas, experience has proved, that the Governor has made an ill use of the power of appointment, it is enacted: There shall be two fit persons to be styled "appointors general," whose duty it shall be to appoint all public officers and to fill all vacancies.
>
> SEC. 2. It is further enacted: "The president of the senate and the speaker of the house of representatives, shall be the appointors general."
>
> This act is clearly unconstitutional; for, in the first place, in order to create this new office, it takes from the Governor a duty or function vested in him by the Constitution; and in the second place, the general assembly fills the office by its own appointment, contrary to the express veto of that instrument.
>
> This is the case under consideration. True, it is on a larger scale and covers more

ground; but although differing in degree it is the same in principle. A new office is created; it is not so in name, but is in effect the office of "appointors for officers in all corporations in which the State is a stockholder," and in order to create the office a duty or function of his office is taken from the executive, and the appointment of these "appointors for corporations" is made by the general assembly.

If it be said, there is this distinction: The "appointors general" in the supposed act are to appoint all State officers, whereas the "appointors for corporations" are confined to State proxies and directors, and these are not officers of the State, but of a corporation in which the State is a stockholder. The reply is: This is a distinction without a difference,—even should it be conceded that the proxies and directors are not public officers—into which question we will not enter, for our concern is with the office of "appointors for corporations," and not with the persons they may appoint to these offices. To the suggestion, the act of April, 1871, does not purport to create an office or to fill it, the reply is: Such, obviously, is the legal effect of the act. When analyzed, it will be found to contain two provisions: There shall be an agency for the State to make the appointment of all State proxies and State directors in corporations. This creates a public office and it can make no difference that it is called the office of appointors of State officers for corporations, or has no name given to it; in the

> second place, the officers who are to discharge this duty are appointed by the general assembly.
>
> We declare our opinion to be, that the statute is unconstitutional, and that the relators are not entitled to the offices claimed.

In the case of *Howerton* v. *Tate*, 68 N. C. 546, the court said (p. 548):

> *Clark* v. *Stanley* decides that the legislature can not authorize the presiding officers of its two branches to appoint proxies and directors in all corporations in which the state has an interest.
>
> We argue from this that they could not authorize a committee of their body to do so * * * it would be an usurpation of executive power. * * *

In *Stockman* v. *Leddy*, 55 Colo. 24, the court considered an act of the legislature creating a committee of its own members to protect the water rights of the State. The court held the act unconstitutional, saying (p. 31):

> The General Assembly not only passed an act—that is, made a law—but it made a joint committee of the Senate and the House its executive agent to carry out that law. This is a clear and conspicuous instance of an attempt by the General Assembly to confer executive power upon a collection of its own members.

It seems to us unimportant whether the Philippine Government as owner of these shares is a mere proprietor or is acting in a sovereign capacity, or whether the corporations are or are not agencies

for the exercise of sovereign powers. In the *Bank of the United States* v. *Planters' Bank of Georgia*, 9 Wheat. 904, it was said that when the Government becomes a partner in any trading company it divests itself, so far as concerns the transactions of that company, of its sovereign character and takes that of a private citizen. See also *Chesapeake & Delaware Canal Co.* v. *United States*, 250 U. S. 123. The mere ownership by the Government of stock in a corporation may not make that corporation a Government agency or clothe the corporation with the attributes of sovereignty. On the other hand, where all of the shares are owned by the Government and the corporation is exercising sovereign functions for the Government, the powers of the corporation itself are governmental in character and its property and operations have sovereign qualities. *Clallam County* v. *United States*, 263 U. S. 341; *United States Emergency Fleet Corporation* v. *Western Union Telegraph Co.*, No. 113, October Term, 1927. The Philippine National Bank in some respects is performing sovereign functions. It acts as fiscal agent of the Government; it issues circulating notes, the redemption of which has been guaranteed by the Philippine Government. (Act No. 3174, approved November 24, 1924, Vol. 20, Public Laws of the Philippine Islands.) According to the report of the Philippine Commission to the Secretary of War, dated April 6, 1916, relating to the Philippine National Bank, "Its fundamental purpose is to provide additional credit facilities for

the development of agriculture and industry, which have been greatly retarded in the past by the usurious rates of interest charged for the use of capital." In some respects the Philippine National Bank is, of course, conducting an ordinary banking business. The Coal Company's business, on the other hand, is confined to coal mining operations not limited to coal deposits on the public domain. In Section 14 of Act No. 2719 of the Philippine Legislature, it was said: "The Government of the Philippine Islands, recognizing the relation of the coal resources of the country to its general welfare, reserves the right to work and exploit coal mines itself or organize and promote coal mining corporations by becoming either exclusive or majority stockholder therein." See also Report of the Governor General for 1918, page 8; *National Coal Co.* v. *Collector of Internal Revenue*, 46 Phil. 583.

Government owned and controlled corporations are proper instruments for the accomplishment of a public purpose. *McCulloch* v. *Maryland*, 4 Wheat. 316; *Osborn* v. *The Bank of the United States*, 9 Wheat. 739; *United States Shipping Board Emergency Fleet Corporation* v. *Western Union Telegraph Co.*, decided January 3, 1928. The use of public funds to buy shares in corporations is justifiable only where a public purpose is to be accomplished. Cooley on Taxation 4th ed., Vol. 1, Sec. 211. *Opinion of the Justices*, 204 Mass. 607.

Section 4 of the Organic Act provides:

> * * * all expenses and obligations contracted for the internal improvement or development of the Islands, not, however, including defenses, barracks, and other works undertaken by the United States, shall, except as otherwise specifically provided by the Congress, be paid by the Government of the Philippines.

In the absence of any restrictions on the power of the Philippine Government to engage in banking and coal-mining operations with a view to developing the natural resources of the Islands and improving the facilities for commerce, it may be that enterprises like these are authorized, but it seems quite immaterial whether the activities of the Government in relation to these corporations are proprietary or sovereign. They are certainly public governmental activities, and it has never been suggested that in dealing with matters in which a government is engaged in a proprietary capacity in the public interest, the division of powers into three departments and the exclusion of the legislature from the exercise of anything but legislative functions are inapplicable. The separation of powers effected by the Organic Act of the Philippine Islands relates to all powers which may be exercised by the Philippine Government, whether it is acting in a proprietary or sovereign capacity.

In Section 9 of the Organic Act, relating to property of the Philippine Government, it is said, "the

Philippine Legislature shall have power to legislate with respect to all such matters as it may deem advisable," but this is a power to enact legislation and not to exercise executive functions. The petitioners make the vague statement that the "duty of caring for Government property" is legislative in character. That depends on what is meant by the "duty of caring for property." Whatever the legislature may do respecting caring for Government property must be in the form of legislation; that is, the enactment of laws and the establishing of rules and principles to be followed by executive officers in dealing with the Government's property. If caring for Government property requires administrative action, that part of the task may not be performed by the Legislature or added to the duties of legislative officers. Caring for Government property in the sense of executing the laws and general directions prescribed by the legislature is executive in character. The legislation here consists in the Acts organizing these corporations, defining their powers and duties, and directing how they shall operate and what transactions they shall engage in. The execution of those laws involves the voting of the stock, the selection of managing agents and directors, and the supervision and control of the corporations' affairs in conformity with the rules prescribed by legislation. The Legislature is not enacting any legislation when it votes stock or selects directors, or removes or appoints

managing agents, and thus, through its representatives, selected by it and removable at its will, runs the business of these institutions.

The statutes here assailed are only part of a number enacted in pursuance of a plan of the Philippine Legislature to strip the Governor General of executive power. Similar provisions giving the President of the Senate and the Speaker of the House, *ex officio*, control over nationally organized and controlled stock corporations are found in the following cases:

Act	Name	Authorized capital
		Pesos
2814	National Petroleum Co.	500,000
2849	National Development Co.	50,000,000
2855	National Cement Co.	500,000
2862	National Iron Co.	500,000

The result of operations of the National Bank under legislative control is indicated by Act No. 3174, approved November 24, 1924, which is entitled an Act to "rehabilitate" the Bank. Possibly, the executive would not have done better.

In the Annual Report of the Governor General for 1926, page 5, the situation is summed up by saying:

> If the Legislature may validly engraft executive functions upon existing legislative officers, the logical result will be the ultimate assumption by the legislature of all executive functions relating to statutes enacted by it, and the Governor General will become a mere figurehead.

II

IF THE MEMBERS OF THE BOARD OF CONTROL AND OF THE COMMITTEE EXERCISE EXECUTIVE FUNCTIONS, THEN THE SELECTION AND APPOINTMENT OF THE MEMBERS IS ITSELF AN EXECUTIVE FUNCTION WHICH MAY NOT BE PERFORMED BY THE LEGISLATURE

The Legislature no doubt may make appointments to legislative positions, and it is equally clear that it may not make appointments to executive offices or posts. To determine in this case whether the act of making an appointment to a position on the Board of Control or Committee is in itself an executive function requires a decision as to whether the functions of the members are executive or legislative. If they are executive, then the point made in paragraph I of this brief is sound and it is unnecessary to go further. If the functions of these positions are legislative in character, then there is nothing to our contention that the Governor General has been deprived of any power that belongs to him in the control of these corporations, and it is equally clear that the act of appointment to places on the Board and Committee is not beyond the legislative authority.

So the argument that making appointment to places or positions on the Board or Committee is in itself an executive function brings us back to the question already dealt with as to the character of the functions of the members of the Board and Committee, and is merely ringing the changes on the single question in the case. But if the subject be ap-

proached from this angle it is not necessary to determine whether a place on the Board of Control or the "Committee" created by these Acts is an office or position separate and distinct from the offices of the Governor General, President of the Senate and Speaker of the House of Representatives, the incumbents of which *ex officio* serve on the Board and Committee. We think, especially in the case of the Board of Control, that a place on these bodies is a distinct office or position, held *ex officio,* but if not, and if the effect of these statutes is merely to add to the duties of the offices of President of the Senate and Speaker of the House of Representatives, then the Acts conferring these functions on members of the legislative body are invalid, because conferring on them executive functions in the voting of the stock, selection and removal of managing officers and agents, and the supervision and direction of the affairs of the corporations.

In *Kilbourn* v. *Thompson,* 103 U. S. 168, it was said (p. 191):

> It is also essential to the successful working of this system that the persons entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other.

Looking at the places on the board of control and committee as separate posts or positions, it is not

important to determine whether the incumbents are "officers" or whether they are mere agents or servants of the Government. The words "office" and "officer" are sometimes given special meanings, according to the particular connection in which they appear. See *Myers* v. *United States*, 272 U. S. 52; *United States* v. *Strang*, 254 U. S. 491.

The underlying question is whether functions exercised by those who serve on the Board of Control and Committee are executive or legislative in character. If executive, then the selection of the persons to fill those places and who execute executive functions is in itself an executive function (*Myers* v. *United States*, pp. 129–131), and it makes no difference whether the incumbent of the place is an "officer" or a mere agent or servant.

That places on the Board or Committee are "public stations, permanent in character, created by law, whose incidents and duties are prescribed by law," seems clear. *Metcalf & Eddy* v. *Mitchell*, 269 U. S. 514; *United States* v. *Hartwell*, 6 Wall. 385. *In re Members of the Legislature*, 49 Fla. 269. Article 401 of the Penal Code of the Philippine Islands, in effect at the time of the enactment of the Organic Act in 1916, defined an officer as "any person who, by direct provision of law, popular election, or appointment by competent authority, shall take part in the performance of duties in the public service."

The Legislature has power to enact legislation providing that an executive officer or agent of the

Government, appointed by the executive power, may exercise *ex officio* the functions of some other executive office. As to the person in the first office when such legislation is enacted it is not necessary that he be reappointed by the executive, and as to those appointed by the executive after such legislation is enacted, the executive appointment operates to fill both places. *Shoemaker* v. *United States*, 147 U. S. 282. For the Legislature to attempt to appoint a legislative official appointed by and holding office during the pleasure of the legislature or one of its branches to an executive post, by giving him the power *ex officio* to discharge executive functions, is an entirely different matter. In such a case, and this is one, the legislature makes the appointment when it fills the legislative office, the incumbent of which *ex officio* discharges the duties of the executive position.

In Report No. 2205, 55th Congress, 3rd Session, House Report, Vol. 2, will be found an elaborate report by the Judiciary Committee of the House as to what constitutes an office. There the committee dealt with that provision of Section 6 of Article I of the Constitution to the effect that "no person holding any office under the United States shall be a member of either House during his continuance in office." It did not deal with the question of appointment by the legislature to places having executive functions.

In some instances Congress has created corporations and designated their managing officers.

The Smithsonian Institution is governed by a board of regents composed of the Vice President, the Chief Justice of the United States, three members of the Senate, and three members of the House, with six other persons. The members of the Senate are appointed by the President of the Senate and the members of the House by the Speaker, and the six other persons by joint resolution. (U. S. C. Title 20, sections 41–67.)

The National Home for Disabled Volunteer Soldiers was incorporated by an act of Congress which provided that the President, the Secretary of War, the Chief Justice, and other persons associated with them should constitute a corporation to have perpetual succession. These three officials, with seven other persons, constitute the Board of Managers. The seven are named by joint resolution of Congress for definite terms of six years. (U. S. C. Title 24, Section 71 et seq.)

There is also the Commission controlling allotment of space in public buildings in the District of Columbia, two members of which are Senators appointed by the President of the Senate and two of which are Representatives appointed by the Speaker of the House to hold office while they remain members of Congress. If this commission regulated only the assignment of quarters in buildings devoted to legislative use, the propriety of appointment of its members by Congress would be obvious, but the Capitol Building and Senate and House Office Buildings are not within its jurisdic-

tion. In so far as it performs the function of assigning quarters to executive officers, in buildings used housing executive departments, the Act is open to question. (U. S. C. Title 40, section 1, et seq.)

In Congressional Report No. 2205, above referred to, reference is made to various commissions, the members of which were appointed by Congress or its Houses. In so far as these commissions perform the function of collecting information preliminary to legislation, such appointments were proper. Wherever any commission or body exercises functions of an executive nature, the appointment of members of it by Congress is clearly open to serious question. Such cases have not been frequent and never have been tested in the courts. It may be said of them that they show how insidious may be the encroachments of the legislature upon the executive authority. As against these cases we have the unbroken practice, legislative and executive, in relation to stock corporations, shares of which have been owned by the United States.

> In the use of Congressional legislation to support or change a particular construction of the Constitution by acquiescence, its weight for the purpose must depend not only upon the nature of the question, but also upon the attitude of the executive and judicial branches of the Government, as well as upon the number of instances in the execution of the law in which opportunity for objection in the courts or elsewhere is afforded. When instances which actually involve the

> question are rare, or have not in fact occurred, the weight of the mere presence of acts on the statute book for a considerable time, as showing general acquiescence in the legislative assertion of a questioned power, is minimized. (*Myers* v. *United States*, 272 U. S. 52, 170–171.)

III

IF THE ACTS OF THE PHILIPPINE LEGISLATURE IN QUESTION WERE IN CONFLICT WITH THE ORGANIC ACT AND VOID, THE FACT THAT CONGRESS DID NOT DECLARE THEM VOID HAS NOT RENDERED THEM VALID

Section 19 of the Organic Act provides:

> All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same.

The petitioners contend that the acts here questioned were reported to Congress, which for some years has taken no steps in the matter, and that it is therefore to be inferred that Congress has ratified or adopted and made valid this legislation. On just what date this ratification or adoption became effective, and there was a transition from invalidity to validity, is not made clear.

The provision quoted only called for action by Congress with respect to valid legislation of the Philippine Legislature. It is not pointed out why Congress should have assumed to annul by legislation an act of the Philippine Legislature which was already void because in conflict with a prior act of

Congress. The duty of declaring invalid legislation void rests with the courts. In the case of *Tiaco* v. *Forbes*, 228 U. S. 549, 558, in considering whether an act of the Philippine Legislature was within its powers or in conflict with the Philippine Bill of Rights, the opinion states, "It is worthy of mention that the law under consideration was reported to Congress and has not been annulled," but the Court based its decision on the ground that the act in question was not in conflict with the Philippine Bill of Rights.

In *Clayton* v. *Utah*, 132 U. S. 632, 642, it was said:

> It can hardly be admitted as a general proposition that under the power of Congress reserved in the Organic Acts of the territories to annul the acts of their legislatures the absence of any action by Congress is to be construed to be a recognition of the power of the legislature to pass laws in conflict with the act of Congress under which they were created.

And in *Berryman* v. *Whitman College*, 222 U. S. 334, in which a statute of the Territory of Washington was set aside because in conflict with the Organic Act, notwithstanding inaction by Congress for twenty-two years after its passage, the Court said (p. 353):

> The only principal contention remaining unnoticed is the alleged acquiescence of Congress in the grant of exemption resulting from its failure to disapprove the act of 1883. The foundation, however, upon which

> that contention rests has been decided to be without merit. *Clayton* v. *Utah*, 132 U. S. 632, 642.

See also *A., T. & S. F. Ry. Co.* v. *Sowers*, 213 U. S. 55, 64. The opinion of the Court in *Fajardo Sugar Co.* v. *Holcomb*, 16 F. (2d) 92, must be read in the light of what was said by the same court in *Gallardo* v. *Porto Rico, etc., Company*, 18 F. (2d) 918, 923, as follows:

> Its failure to annul has some, though not controlling, weight. * * * This proposition goes too far. Failure to annul is not the full equivalent to adoption.

There is nothing in the Organic Act or in the decisions of this Court to support the contention that the acts of the Philippine Legislature here assailed, if void, because in conflict with the Organic Act, became valid at some undetermined date because Congress has not performed the useless act of enacting a statute declaring them void.

CONCLUSION

The acts of the Philippine Legislature, in so far as they deprive the Governor General of the power to vote the Government's shares of stock in the Philippine National Bank and the National Coal Company, and deny him the power to select the managing directors and officers of those corporations and exclude him from any control or supervision over the current operations of these corporations, are in plain conflict with the Organic Act. The invalidity of the amendatory acts relating to the National Bank, creating a Board of Control,

leaves in operation the original statute vesting the voting power in the Governor General. The invalidity of the provision in the charter of the Coal Company, vesting the voting power in a committee, leaves no statute prescribing who shall vote the stock of that corporation, but in that situation, power to vote it being an executive function, by necessary operation of the provisions of the Organic Act that power must be exercised by the Governor General or under his direction. The judgments of the Supreme Court of the Philippine Islands should be affirmed.

Respectfully submitted.

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APRIL, 1928.

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SUPREME COURT OF THE UNITED STATES.

Nos. 564 and 573.—October Term, 1927.

564 — Milton E. Springer, Dalmacio Costas, and Anselmo Hilario, Petitioners, *vs.* The Government of the Philippine Islands.

573 — Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia, Petitioners, *vs.* The Government of the Philippine Islands.

On Writs of Certiorari to the Supreme Court of the Philippine Islands.

[May 14, 1928.]

Mr. Justice Sutherland delivered the opinion of the Court.

These cases, presenting substantially the same question, were argued and will be considered and disposed of together. In each case an action in the nature of *quo warranto* was brought in the court below challenging the right to hold office of directors of certain corporations organized under the legislative authority of the Philippine Islands, No. 564 involving directors of the National Coal Company and No. 573 involving directors of the Philippine National Bank.

The National Coal Company was created by Act 2705, approved March 10, 1917, subsequently amended by Act 2822, approved March 5, 1919. The Governor-General, under the provisions of the amended act, subscribed on behalf of the Philippine Islands for substantially all of the capital stock. The act provides: "The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee, consisting of the Governor-General, the President of the Senate and the Speaker of the House of Representatives."

The National Bank was created by Act 2612, approved February 4, 1916, subsequently amended by Act 2747, approved February 20, 1918, and Act 2938, approved January 30, 1921. The authorized capital of the bank, as finally fixed, was 10,000,000 pesos, consisting

of 100,000 shares, of which, in pursuance of the legislative provisions, the Philippine Government acquired and owns 97,332 shares, the remainder being held by private persons. By the original act the voting power of the government-owned stock was vested exclusively in the Governor-General but by the amended acts now in force that power was "vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives." The Governor-General was also divested of the power of appointment of the President and Vice-President of the bank, originally vested in him, and their election was authorized to be made by the directors from among their own number. Provision was also made for a general manager, to be appointed or removed by the board of directors with the advice and consent of the Board of Control. The manager was to be chief executive of the bank, with an annual salary to be fixed by the board of directors with the approval of the Board of Control. Further duties were conferred upon the Board of Control in connection with the management of the bank which it does not seem necessary to set forth.

It is worthy of note that this voting power has been similarly devolved by the legislature upon at least four other corporations: The National Petroleum Company, by Act 2814; The National Development Company, by Act 2849; The National Cement Company, by Act 2855; and The National Iron Company, by Act 2862; and the suggestion of the Solicitor General that this indicates a systematic plan on the part of the legislature to take over, through its presiding officers, the direct control generally of nationally organized or controlled stock corporations would seem to be warranted.

In pursuance of the first quoted provision, petitioners in No. 564 were elected directors of the National Coal Company by a vote of the government-owned shares cast by the President of the Senate and the Speaker of the House; and in pursuance of the second quoted provision, petitioners in No. 573 were elected directors of the National Bank in the same way. The Governor-General, challenging the validity of the legislation, did not participate in either election. While there are some differences between the two actions in respect of the facts, they are differences of detail which do not affect the substantial question to be determined.

On behalf of the Philippine Government, respondent in both cases, it is contended that the election of directors and managing agents by a vote of the government-owned stock was an executive function entrusted by the Organic Act of the Philippine Islands to the Governor-General, and that the acts of the Legislature divesting him of that power and vesting it, in the one case, in a "board," and, in the other, in a "committee," the majority of which in each instance consisted of officers and members of the Legislature, were invalid as being in conflict with the Organic Act. The court below sustained the contention of the Government and entered judgments of ouster against the petitioners in each case. — Phil. —.

The Congressional legislation referred to as the "Organic Act" is the enactment of August 29, 1916, c. 416, 39 Stat. 545, which constitutes the fundamental law of the Philippine Islands and bears a relation to their governmental affairs not unlike that borne by a state constitution to the state. The act contains a bill of rights, many of the provisions of which are taken from the federal Constitution. It lays down fundamental rules in respect of taxation, shipping, customs duties, etc. Section 8 of the act provides, "That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act." And by § 12 this legislative power is vested in a legislature, to consist of two houses, one the senate and the other the house of representatives. Provision is made (§§13, 14 and 17) for memberships, terms and qualifications of the members of each house. By § 21 it is provided "that the supreme executive power shall be vested in an executive officer, whose official title shall be 'The Governor General of the Philippine Islands.'" He is given "general supervision and control of all of the departments and bureaus of the government in the Philippine Islands as far as is not inconsistent with the provisions of this Act." He is made "responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands." Other powers of an important and comprehensive character also are conferred upon him. By § 22 the executive departments of the Philippine government, as then authorized by law, are continued until otherwise provided by the legislature. The legislature is authorized by appropriate legislation to "increase the number or abolish any of the executive departments, or make such changes in the

names and duties thereof as it may see fit," and "provide for the appointment and removal of the heads of the executive departments by the Governor General." Then follows the proviso: "That all executive functions of the government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General." Section 26 recognizes the existing supreme court and courts of first instance of the Islands and continues their jurisdiction as theretofore provided, with such additional jurisdiction as should thereafter be prescribed by law.

Thus the Organic Act, following the rule established by the American constitutions, both state and federal, divides the government into three separate departments—the legislative, executive and judicial. Some of our state constitutions expressly provide in one form or another that the legislative, executive and judicial powers of the government shall be forever separate and distinct from each other. Other constitutions, including that of the United States, do not contain such an express provision. But it is implicit in all, as a conclusion logically following from the separation of the several departments. See *Kilbourn* v. *Thompson*, 103 U. S. 168, 190-191. And this separation and the consequent exclusive character of the powers conferred upon each of the three departments is basic and vital—not merely a matter of governmental mechanism. That the principle is implicit in the Philippine Organic Act does not admit of doubt. See *Abueva* v. *Wood*, 45 Phil. Rep. 612, 622, 628 *et seq.*

It may be stated then, as a general rule inherent in the American constitutional system, that, unless otherwise expressly provided or incidental to the powers conferred, the legislature cannot exercise either executive or judicial power; the executive cannot exercise either legislative or judicial power; the judiciary cannot exercise either executive or legislative power. The existence in the various constitutions of occasional provisions expressly giving to one of the departments powers which by their nature otherwise would fall within the general scope of the authority of another department emphasizes, rather than casts doubt upon, the generally inviolate character of this basic rule.

Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are

executive functions. It is unnecessary to enlarge further upon the general subject, since it has so recently received the full consideration of this Court. *Myers* v. *United States*, 272 U. S. 52.

Not having the power of appointment, unless expressly granted or incidental to its powers, the legislature cannot engraft executive duties upon a legislative office, since that would be to usurp the power of appointment by indirection; though the case might be different if the additional duties were devolved upon an appointee of the executive. *Shoemaker* v. *United States*, 147 U. S. 282, 300-301. Here the members of the legislature who constitute a majority of the "board" and "committee," respectively, are not charged with the performance of any legislative functions or with the doing of anything which is in aid of the performance of any such functions by the legislature. Putting aside for the moment the question whether the duties devolved upon these members are vested by the Organic Act in the Governor-General, it is clear that they are not legislative in character, and still more clear that they are not judicial. The fact that they do not fall within the authority of either of these two constitutes logical ground for concluding that they do fall within that of the remaining one of the three among which the powers of government are divided. Compare *Myers* v. *United States*, *supra*, pp. 117-118.

Assuming, for present purposes, that the duty of managing this property, namely, the government-owned shares of stock in these corporations, is not sovereign but proprietary in its nature, the conclusion must be the same. The property is owned by the government, and the government in dealing with it whether in its quasi-sovereign or its proprietary capacity nevertheless acts in its governmental capacity. There is nothing in the Organic Act, or in the nature of the legislative power conferred by it, to suggest that the legislature in acting in respect of the proprietary rights of the government may disregard the limitation that it must exercise legislative and not executive functions. It must deal with the property of the government by making rules, and not by executing them. The appointment of managers (in this instance corporate directors) of property or a business is essentially an executive act which the legislature is without capacity to perform directly or through any of its members.

Whether the members of the "board" or the "committee" are public officers in a strict sense we do not find it necessary to deter-

mine. They are public agents at least, charged with the exercise of executive functions and, therefore, beyond the appointing power of the legislature. *Stockman* v. *Leddy*, 55 Colo. 24, involved a case very much like that now under consideration. The state legislature had created a committee of its own members to investigate the rights of the state in the flowing waters therein. The committee was authorized to determine what steps were necessary to be taken to protect the rights of the state, to employ counsel, etc. There was no claim that the investigation was for the purpose of ascertaining facts to aid in future legislation or to assist the legislature in its legislative capacity, but it was for the purpose of enabling the committee itself to reach a conclusion as to what should be proper to do in order to protect the rights of the state. The court, in holding the act unconstitutional, said (p. 31): "In other words, the general assembly not only passed an act—that is, made a law—but it made a joint committee of the senate and the house as its executive agent to carry out that law. This is a clear and conspicuous instance of an attempt by the general assembly to confer executive power upon a collection of its own members." And the court held that this was invalid under the provisions of the state constitution respecting the tripartite division of governmental powers. See also, *Clark* v. *Stanly*, 66 N. C. 59; *State ex rel. Howerton* v. *Tate*, 68 N. C. 546.

Petitioners seek to draw a parallel between the power of Congress to create corporations as appropriate means of executing governmental powers and the acts of the Philippine legislature here under consideration. To what extent the powers of the two bodies in this respect may be assimilated we need not stop now to determine, since the power of the legislature to create the two corporations here involved is not doubted. But it is argued further that Congress in creating corporations for governmental purposes has sometimes devolved the voting power in such corporations upon persons other than executive officers. In the case of the Smithsonian Institution, cited as an example, Congress provided for a governing Board of Regents composed in part of members of the Senate and of the House. There are two or three other instances in respect of non-stock organizations of like character. On the other hand, as pointed out by the Solicitor General, in the case of governmentally organized or controlled stock corporations, Congress has uniformly recognized the executive authority in their manage-

ment, generally providing in express terms that the shares shall be voted by an executive officer, and in no instance attempting to grant such power to one or more of its members. Many instances of this kind are cited by the Solicitor General, but it is not necessary to repeat his enumeration. It is enough to say that, when we consider the limited number of acts of Congress which fall within the first class spoken of above, as well as the peculiar character of the institutions dealt with, and the contrary attitude of Congress toward corporations of a different character, such acts cannot be regarded as lending support to a construction of the Constitution which would justify Congressional legislation like that here involved. As this Court said in *Myers* v. *United States*, *supra*, pp. 170-171:

"In the use of Congressional legislation to support or change a particular construction of the Constitution by acquiescence, its weight for the purpose must depend not only upon the nature of the question, but also upon the attitude of the executive and judicial branches of the Government, as well as upon the number of instances in the execution of the law in which opportunity for objection in the courts or elsewhere is afforded. When instances which actually involve the question are rare, or have not in fact occurred, the weight of the mere presence of acts on the statute book for a considerable time, as showing general acquiescence in the legislative assertion of a questioned power, is minimized."

And we are further of the opinion that the powers asserted by the Philippine Legislature are vested by the Organic Act in the Governor-General. The intent of Congress to that effect is disclosed by the provisions of that act already set forth. Stated concisely these provisions are: that the supreme executive power is vested in the Governor-General, who is given general supervision and control over all the departments and bureaus of the Philippine government; upon him is placed the responsibility for the faithful execution of the laws of the Philippine Islands; and, by the general proviso, already quoted, all executive functions must be directly under the Governor-General or within one of the executive departments under his supervision and control. These are grants comprehensive enough to include the powers attempted to be exercised by the legislature by the provisions of law now under review. *Myers* v. *United States*, *supra*.

It is true that § 21 contains a specific provision that the Governor-General shall appoint such officers as may now be appointed by the Governor-General, or such as he is authorized by this act

to appoint, or whom he may hereafter be authorized by law to appoint. And it is said that the effect of this is to confine the Governor-General's powers of appointment within the limits of this enumeration. The general rule that the expression of one thing is the exclusion of others is subject to exceptions. Like other canons of statutory construction it is only an aid in the ascertainment of the meaning of the law and must yield whenever a contrary intention on the part of the law-maker is apparent. Where a statute contains a grant of power enumerating certain things which may be done and also a general grant of power which standing alone would include these things and more, the general grant may be given full effect if the context shows that the enumeration was not intended to be exclusive. See, for example, *Ford* v. *United States*, 273 U. S. 593, 611, *Portland* v. *N. E. T. & T. Co.*, 103 Me. 240, 249; *Grubbe* v. *Grubbe*, 26 Or. 363, 370; *Swick* v. *Coleman*, 218 Ill. 33, 40; *Lexington ex rel.* v. *Commercial Bank*, 130 Mo. App. 687, 692; *McFarland* v. *M. K. & T. Ry. Co.*, 94 Mo. App. 336, 342.

Applying these principles, we are unable to accept the contention that the enumeration here in question is exclusive in the face of the general provisions already quoted and particularly of that one which declares that all executive functions are vested directly in the Governor-General or under his supervision and control. It is true that this provision is in the form of a proviso, and it is argued that it is, therefore, nothing more than a definition by negation of the power given to the legislature in the same section. But an analysis of the section, which is reproduced so far as pertinent in the margin,* shows, though not wholly beyond doubt,

*Sec. 22. That, except as provided otherwise in this Act, the executive departments of the Philippine government shall continue as now authorized by law until otherwise provided by the Philippine Legislature. When the Philippine Legislature herein provided shall convene and organize, the Philippine Commission, as such, shall cease and determine, and the members thereof shall vacate their offices as members of said commission: *Provided*, That the heads of executive departments shall continue to exercise their executive functions until the heads of departments provided by the Philippine Legislature pursuant to the provisions of this Act are appointed and qualified. The Philippine Legislature may thereafter by appropriate legislation increase the number or abolish any of the executive departments, or make such changes in the names and duties thereof as it may see fit, and shall provide for the appointment and removal of the heads of the executive departments by the Governor-General: *Provided*, That all executive functions of the government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General. . . .

that the power given to the legislature is itself a proviso. In other words, both the grant of power to the legislature and the grant of power to the Governor-General are in form provisos to the general provisions of § 22 which precede them. It is difficult to assign to either proviso the general purpose of that form of legislation, which is merely to qualify the operation of the general language which precedes it. We think rather that both provisos are to be construed as independent and substantive provisions. As this Court has more than once pointed out, it is not an uncommon practice in legislative proceedings to include independent pieces of legislation under the head of provisos. See *Georgia Banking Co.* v. *Smith*, 128 U. S. 174, 181; *White* v. *United States*, 191 U. S. 545, 551; *Cox* v. *Hart*, 260 U. S. 427, 435.

Finally, it is urged that since no action has been taken by Congress under § 19 of the Organic Act, requiring all laws enacted by the Philippine Legislature to be reported to Congress, which reserves the power to annul them, the legislation now under review has received the implied sanction of Congress and should not be disturbed. *Clinton* v. *Englebrecht*, 13 Wall. 434, 446, is cited in support of this contention. In that case jurors were summoned into the legislative courts of the territory of Utah under the provisions of acts of Congress applicable only to the courts of the United States. This Court held that the jurors were wrongly summoned and a challenge to the array should have been sustained. The Court, however, proceeded also to examine the jury law enacted by the territorial legislature, and declared it to be valid. In the course of the opinion it was said that since the simple disapproval by Congress at any time would have anulled that law, it was not unreasonable to infer that it was approved by that body. In the later case of *Clayton* v. *Utah Territory*, 132 U. S. 632, an act of the same territory providing for the appointment of certain officers, was held to be void as in contravention of a provision of the territorial Organic Act vesting in the Governor the power to appoint such officers. Dealing with the same point here made, this Court said (p. 642):

"It is true that in a case of doubtful construction the long acquiescence of Congress and the general government may be resorted to as some evidence of the proper construction, or of the validity, of a law. This principle is more applicable to questions relating to the construction of a statute than to matters which go to the power of the legislature to enact it. At all events, it can

hardly be admitted as a general proposition that under the power of Congress reserved in the organic acts of the Territories to annul the acts of their legislatures the absence of any action by Congress is to be construed to be a recognition of the power of the legislature to pass laws in conflict with the act of Congress under which they were created."

The inference of an approval by Congress from its mere failure to act at best rests upon a weak foundation. And we think where the inference is sought to be applied, as here, to a case where the legislation is clearly void as in contravention of the Organic Act it cannot reasonably be indulged. To justify the conclusion that Congress has consented to the violation of one of its own acts of such fundamental character, will require something more than such inaction upon its part as really amounts to nothing more than a failure affirmatively to declare such violation by a formal act.

Whether the Philippine Legislature, in view of the alternative form of the provision vesting all executive functions directly under the Governor-General or within one of the executive departments under his supervision and control, might devolve the voting power upon the head of an executive department or an appointee of such head, we do not now decide. The legislature has not undertaken to do so; and in the absence of such an attempt it necessarily results that the power must be exercised directly by the Governor-General or by his appointee, since he is the only executive now definitely authorized by law to act.

The judgments in both cases are

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

Nos. 564 and 573.—October Term, 1927.

Milton E. Springer, Dalmacio Costas, and Anselmo Hilario, Petitioners,	
564 *vs.*	
The Government of the Philippine Islands.	On Writs of Certiorari to the Supreme Court of the Philippine Isands.
Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, Petitioners,	
573 *vs.*	
The Government of the Philippine Islands.	

[May 14, 1928.]

Mr. Justice Holmes.

The great ordinances of the Constitution do not establish and divide fields of black and white. Even the more specific of them are found to terminate in a penumbra shading gradually from one extreme to the other. Property must not be taken without compensation, but with the help of a phrase, (the police power,) some property may be taken or destroyed for public use without paying for it, if you do not take too much. When we come to the fundamental distinctions it is still more obvious that they must be received with a certain latitude or our government could not go on.

To make a rule of conduct applicable to an individual who but for such action would be free from it is to legislate—yet it is what the judges do whenever they determine which of two competing principles of policy shall prevail. At an early date it was held that Congress could delegate to the Courts the power to regulate process, which certainly is lawmaking so far as it goes. *Wayman* v. *Southard*, 10 Wheat. 1, 42. *Bank of the United States* v. *Halstead*, 10 Wheat. 51. With regard to the Executive, Congress has delegated to it or to some branch of it the power to impose penalties, *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U. S. 320; to

make conclusive determination of dutiable values, *Passavant* v. *United States*, 148 U. S. 214; to establish standards for imports, *Buttfield* v. *Stranahan*, 192 U. S. 470; to make regulations as to forest reserves, *United States* v. *Grimaud*, 220 U. S. 506, and other powers not needing to be stated in further detail. *Houston* v. *St. Louis Independent Packing Co.*, 249 U. S. 479. *Union Bridge Co.* v. *United States*, 204 U. S. 364. *Ex parte Kollock*, 165 U. S. 526. Congress has authorized the President to suspend the operation of a statute, even one suspending commercial intercourse with another country, *Field* v. *Clark*, 143 U. S. 649, and very recently it has been decided that the President might be given power to change the tariff. *J. W. Hampton, Jr., & Co.* v. *United States*, April 9, 1928. It is said that the powers of Congress cannot be delegated, yet Congress has established the Interstate Commerce Commission, which does legislative, judicial and executive acts, only softened by a *quasi*; makes regulations, *Intermountain Rate Cases*, 234 U. S. 476, 486, issues reparation orders, and performs executive functions in connection with Safety Appliance Acts, Boiler Inspection Acts, &c. Congress also has made effective excursions in the other direction. It has withdrawn jurisdiction of a case after it has been argued. *Ex parte McCardle*, 7 Wall. 506. It has granted an amnesty, notwithstanding the grant to the President of the power to pardon. *Brown* v. *Walker*, 161 U. S. 591, 601. A territorial legislature has granted a divorce. *Maynard* v. *Hill*, 125 U. S. 190. Congress has declared lawful an obstruction to navigation that this Court has declared unlawful. *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 18 How. 421. Parallel to the case before us Congress long ago established the Smithsonian Institution to question which would be to lay hands on the Ark of the Covenant; not to speak of later similar exercises of power hitherto unquestioned, so far as I know.

It does not seem to need argument to show that however we may disguise it by veiling words we do not and cannot carry out the distinction between legislative and executive action with mathematical precision and divide the branches into watertight compartments, were it ever so desirable to do so, which I am far from believing that it is, or that the Constitution requires.

The only qualification of such latitude as otherwise would be consistent with the threefold division of power, is the proviso in § 22 of the Organic Act 'that all executive functions of the Government must be directly under the Governor General or within one of the

executive departments', &c. Act of August 29, 1916, c. 416, 39 Stat. 553, U. S. C., Title 48, § 1114. That does not appear to me to govern the case. The corporations concerned were private corporations which the legislature had power to incorporate. Whoever owned the stock the corporation did not perform functions of the Government. This would be plain if the stock were in private hands, and if the Government bought the stock from private owners the functions of the corporations would not be changed. If I am right in what I have said I think that ownership would not make voting upon the stock an executive function of the Government when the acts of the corporation were not. I cannot believe that the legislature might not have provided for the holding of the stock by a board of private persons with no duty to the Government other than to keep it informed and to pay over such dividends as might accrue. It is said that the functions of the Board of Control are not legislative or judicial and therefore they must be executive. I should say rather that they plainly are no part of the executive functions of the Government but rather fall into the indiscriminate residue of matters within legislative control. I think it would be lamentable even to hint a doubt as to the legitimacy of the action of Congress in establishing the Smithsonian as it did, and I see no sufficient reason for denying the Philippine legislature a similar power.

Mr. Justice BRANDEIS agrees with this opinion.

Mr. Justice MCREYNOLDS.

I think the opinion of the majority goes much beyond the necessities of the case.

The "Organic Act" is careful to provide: "That all executive functions of the government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General."

A good reason lies behind this limitation which does not apply to our Federal or State governments. From the language employed, read in the light of all the circumstances, perhaps it is possible to spell out enough to overthrow the challenged legislation. Beyond that it is unnecessary to go.